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STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Report of the Secretary-General

Addendum

1. The attention of the Preparatory Committee is drawn to the attached document entitled "The effectiveness of United Nations methods and mechanisms in the field of human rights: a critical overview" prepared by Mr. Maxime Tardu. The study was commissioned by the Centre for Human Rights pursuant to General Assembly resolutions 45/155 of 18 December 1990 and 46/116 of 17 December 1991.

2. The theme of the study corresponds to the fourth objective of the World Conference on Human Rights; this objective, set out in paragraph 1 (d) of resolution 45/155, is the following:

> "To evaluate the effectiveness of the methods and mechanisms used by the United Nations in the field of human rights".

3. Indicative annotations issued by the Secretariat of the World Conference relating to the theme of the following study are to be found in paragraphs 11 and 12 of document A/CONF.157/PC/20.

THE EFFECTIVENESS OF UNITED NATIONS METHODS AND MECHANISMS IN THE FIELD OF HUMAN RIGHTS: A CRITICAL OVERVIEW

by

Maxime Tardu

Note: Unedited text for circulation to the fourth session of the Preparatory Committee. The final edited version will be prepared for the World Conference.

CONTENTS

		Paragraphs	Page
INTRODUCTION		1 - 7	7
I.	ORGANIZATION AND FUNDAMENTAL PROCEDURES	8 - 42	8
A.	Composition of the bodies	13 - 21	8
B.	Decision-making process and hierarchical structure of the bodies	22	10
C.	The issue of urgency: an impossible task?	23 - 26	10
D.	Methods of work	27 - 30	11
E.	Regionalization: general remarks	31 - 34	12
F.	Coordination: general remarks	35 - 42	12
II.	RESEARCH AND STANDARD-SETTING ACTIVITY	43 - 69	13
A.	Preparatory research	45 - 49	14
B.	Standard-setting approaches and mechanisms	50 - 61	15
C.	Legislation, regionalization and coordination	62 - 66	17
D.	Future trends and planning of the United Nations standard-setting programme	67 - 69	17
III.	MONITORING AND DETERRENCE	70 - 237	18
A.	Organization	70 - 81	18
B.	Encouragement of treaty ratification	82 - 90	20
C.	Periodic reports	91 - 117	21
D.	Complaint procedures: quasi-judicial complaint mechanisms	118 - 142	26
E.	Complaint procedures: the "1503" complaint/information procedures	143 - 154	29
F.	Complaint procedures: the public debate on violations	155 - 164	31
G.	Complaint procedures: ex officio investigations by special rapporteurs and ad hoc groups	165 - 189	32
H.	Effectiveness of the complaint procedures	190 - 201	36

CONTENTS (continued)

		Paragraphs	Page
III. (cont'd)			
I.	Monitoring and deterrence: towards the third generation?	202 - 203	38
1.	Early preventive action	204 - 209	38
2.	Better targeting	210 - 218	39
3.	Urgent action	219 - 223	40
4.	Towards an international criminal court?	224 - 228	41
5.	Towards a revitalized International Court of Justice?	229 - 232	41
6.	Collective sanctions for massive violations of human rights. Role of the Security Council	233 - 237	42
IV.	PROMOTIONAL ACTIVITIES: INFORMATION, EDUCATION, TECHNICAL COOPERATION	238 - 299	43
A.	Information	238 - 255	43
1.	From diplomatic consensus to call for mobilization	244 - 246	44
2.	Concrete examples	247 - 250	44
3.	Role of the United Nations Information Centres	251 - 255	45
B.	Human rights education	256 - 275	45
C.	Advisory services and technical cooperation	276 - 299	48
1.	Encouraging requests for assistance	276 - 286	48
2.	The principle of proximity in needs assessment and project formulation	287 - 290	49
3.	Programming strategies	291 - 296	50
4.	Coordination	297	50
5.	The problem of evaluation	298 - 299	51
V.	GENERAL CONCLUSIONS	300 - 317	51

Abbreviations

CAT	Committee Against Torture
CCPR	International Covenant on Civil and Political Rights
CERD	Committee on the Elimination of all Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CHR	Commission on Human Rights
ECOSOC	United Nations Economic and Social Council
GA	United Nations General Assembly
SC	Subcommission on Prevention of Discrimination and Protection of Minorities

[list to be completed prior to publication]

INTRODUCTION

1. This study has been prepared in accordance with the wish expressed in General Assembly resolution 45/155 concerning an evaluation of "the effectiveness of United Nations activities and mechanisms in the field of human rights".

2. Such a study can be meaningful only in the light of the main Purposes and Principles of the United Nations as defined by the Charter. It should first of all be recalled that Articles 1 and 55 of the Charter assign to the Organization the task, not to "ensure" but to "encourage" and to "promote" respect for human rights. The obligation is one of intention and employing means, rather than that of delivering results. In other words, if the Charter is interpreted to the letter, the Organization cannot automatically be accused of ineffectiveness simply because large-scale human rights violations persist. A more subtle analysis is called for in order to endeavour to determine whether everything possible has been done and all possible means have been employed by the Organization, in the context of the Charter, to achieve the supreme purpose of universal respect for, and observance of, human rights. Such an evaluation is extremely arduous. In no way can it aspire - at least at the present time - to scientific precision.

3. Our evaluation also needs to take account of the limits set by the Charter on the powers of the Organization in the field of human rights. The United Nations was founded upon the principle of the sovereign equality of its States Members and it establishes a close link between multilateral action on behalf of human rights and the progress of "cooperation" among States (Art. 1). In principle, the Charter excludes - except where sovereignty has been expressly delegated - any coercive intervention in the field of human rights. In these areas, the Organization acts essentially by means of recommendations. These are the outcome of painstaking compromises reached following parliamentary-style debates which bring the cultural traditions and political choices of 180 States face to face. Thus, one cannot compare the effectiveness of the universal system of cooperation constituted by the United Nations with that of a supranational system such as the European Communities, or with that of organizations that are cooperative but sectoral or regional and in which agreement is based on a more homogenous composition and approaches.

4. One should also avoid a defect common in certain media, that of confining the evaluation to only one of the United Nations functions in the field of human rights: combating violations by means of monitoring, deterrence and sanction. Although this is an essential function, it is not in itself sufficient: it must be one of a number of tasks that are expressly or implicitly defined by the Charter.

5. According to the Charter and to the widely accepted practice deriving from it, the Organization has a fourfold mission in the field of human rights: (a) to gather information on problems and trends in the field of human rights throughout the world; (b) to identify and specify international standards in that respect, in the light of economic, social and cultural developments; (c) to perform a monitoring function and to take dissuasive action when these standards are violated or under threat of violation; (d) to undertake

promotional activities in the spheres of education, training, strengthening social and political structures through technical cooperation and advisory services, to ensure the development of a "human rights culture" and to prevent large-scale violations. There may soon be recognition for a fifth function of the United Nations: to encourage and, if necessary, itself contribute to making good damage and assisting individual victims of large-scale human rights violations.

6. These various functions are deeply interdependent: for example, it is impossible to practise dissuasion effectively unless there is a sufficiently clear and universally accepted concept of the human rights that are to be preserved. A reliable system whereby the United Nations can gather credible data is a prerequisite for all the other functions to be performed effectively.

7. Our study will focus on identifying factors for evaluating the effectiveness of the Organization, in the performance of various functions. First of all, we shall consider the tool it uses, i.e. the Organization's network of bodies and the principal procedures involved in taking decisions in respect of human rights.

I. ORGANIZATION AND FUNDAMENTAL PROCEDURES

8. The number of United Nations agencies that contribute to define and implement the United Nations human rights programme has increased almost exponentially since 1945.

9. Side by side with the increase in the number of United Nations bodies, there has been a dual tendency over the past 20 years to broaden their composition and to increase the length and number of their sessions. This is partly due to the universalization of the college of member States. It is primarily the consequence of the growing awareness of human rights among peoples and Governments.

10. In frequent contrast to the specialized and regional agencies, most of the United Nations bodies concerned with human rights, make public debate a rule. A special decision is required to hold meetings in camera.

11. Another feature of the United Nations as regards human rights is the growing role played in practice by NGOs in consultative status in the Economic and Social Council and in its subsidiary bodies.

12. The question arises whether these structures and mechanisms are by themselves able to enhance United Nations effectiveness in the field of human rights, or whether they hinder it.

A. Composition of the bodies

13. The credibility - and consequently the effectiveness - of a national or international body responsible for enforcing human rights first and foremost requires clear guarantees of representativeness and impartiality in its composition.

14. The principal response by the United Nations to this requirement appears nowadays to be the concept of geographical distribution.

15. This necessary practice of equity undoubtedly contributes to fomenting an impression of representativeness and impartiality. However, geographical distribution is far from solving all problems in this respect.

16. One sees that numerous intraregional conflicts are developing and that at the same time ideological, religious, economic or political affinities and alliances that transcend regions are intensifying. A solution based on strictly geographical criteria may well fail to guarantee that such trends are equitably represented.

17. Attention has often been drawn to another far more fundamental imbalance: the insufficient number of women in United Nations bodies, including those responsible for promoting human rights.

18. It would also be desirable for human rights bodies to be multidisciplinary in their composition. Jurists are currently predominant. The contemporary conceptual development taking place in respect of human rights, which encompasses socio-economic, demographic and environmental problems, as well as those posed by the "new biology" makes a diversified composition more necessary than ever.

19. A crucial problem is that of the independence of the members of the "expert" bodies, the number of which has multiplied recently, and of the special rapporteurs appointed in an individual capacity.

20. The solution calls for experts to be protected against infringements of their freedom of movement and physical integrity or from threats that may be made either against them or their families. The Convention on the Privileges and Immunities of the United Nations could be considered ambiguous on this subject. In the Mazilu case, the International Court of Justice made great progress in this regard. This course should be resolutely pursued, and was called for, for example, by the Sub-Commission's Working Group on the methods of work.

21. However, the problem of the independence of experts also has fundamental structural aspects. There has been criticism of the fact that some members of the Sub-Commission, who are elected in an individual capacity, are also civil servants, subject in one way or another to the authority of the Executive. 1/ Moreover, a number of these individual experts simultaneously represented their States on a hierarchically superior United Nations organ (the General Assembly, the Economic and Social Council or the Commission on Human Rights). For example, in 1967-1968 criticism was levelled at the Ad Hoc Working Group of Experts on Southern Africa and it was pointed out that its members, appointed in an individual capacity, had also previously represented their countries on the Commission on Human Rights, in which capacity they had taken part in earlier votes condemning South Africa. Naturally, and in a very small number of inter-State organizations, such problems give rise to fairly stringent considerations of incompatibility. This is not yet the case at the

United Nations. Clearly - and it should be emphasized notwithstanding the frequently high level of objectivity attained within these bodies - this situation tends to lessen the credibility, and thus the effectiveness of the United Nations as far as public opinion is concerned.

B. Decision-making process and hierarchical structure of the bodies

22. There are four hierarchical levels in the permanent organization chart of the United Nations, not counting working groups: the Sub-Commission, the Commission, the Economic and Social Council and the General Assembly. This cumbersome system contrasts, for example, with the two or three levels of ILO and UNESCO. Proposals aimed at making the Commission a principal organ with a direct link to the General Assembly were made as early as in 1968 at the Tehran Conference and during debates within the Commission on its methods of work and "alternative approaches". 2/ The suggestion was again advanced in 1990 in the Preparatory Committee. 3/ However, these proposals have so far not been accepted.

C. The issue of urgency: an impossible task?

23. The preservation of human rights, like that of peace of which it is a prerequisite, requires urgent, even immediate action in the face of major crises. The large-scale atrocities in Somalia, Kurdistan, Bosnia and so many others highlighted by the audiovisual media have strongly bolstered this demand on the part of the public. I hope that one day soon it will become irresistible. For the time being, the idée-force underlying the right of intervention and a fortiori the Organization's duty to intervene that justifies immediate coercive action has been applied only in a limited manner, in connection with humanitarian aid.

24. Although the length of their meetings is increasing, the number of the sessions of the human rights bodies continues to be restricted by budgetary constraints and by the calendar of conferences. Only in 1990, in resolution 1990/48, did the Council authorize the Commission to meet exceptionally between its regular sessions, provided that a majority of States members of the Commission so agreed. This new rule was applied on 10 August 1992 for the question of Bosnia, five days after the request was made by a State member: the action was as rapid as possible in view of the problems of communication, although five days might prove to be five days too many in extreme circumstances.

25. Provision should at least be made for measures of conservation or interim measures between sessions. This necessity has been clearly perceived by the Inter-American Commission on Human Rights, whose rules of procedure seem to permit substantial inter-sessional action (see, for example, arts. 9 and 26 C3 and 27). A similar trend can be seen in various ILO organs and in the Council of Europe.

26. This is in sharp contrast to the attitude of the United Nations human rights bodies. Ever since their inception they have shied at delegating the slightest competence, even of pure routine, to their officers, to a rapporteur or a fortiori to the Secretariat. It is typical, for example, that when the

Human Rights Committee adopted its rules of procedure in 1977, it formally rejected a draft article from the Secretariat which made provision for such delegation. 4/ Some progress has recently been made towards a more flexible attitude in respect of inter-sessional powers.

D. Methods of work

27. Over the last 10 or so years, the methods of work of the human rights bodies have been subjected to extensive self-criticism, particularly by the Commission and the Sub-Commission. This has taken place, in particular, under the items entitled "alternative approaches" and "review of the work of the Sub-Commission."

Inadequate programming and planning

28. In spite of repeated instructions from the Economic and Social Council and the Committee for Programme and Coordination (CPC), both the Commission and the Sub-Commission have been extremely slow to focus their attention on developing a carefully thought out medium- and long-term programme of work and plans of action.

The agenda

29. It is virtually standard practice for the Commission and the Sub-Commission to be unable to complete consideration of their agenda. Critics of the United Nations often use this as an argument in complaining of the Organization's "inefficiency". This criticism is to some extent, unfounded: it is all the more difficult to complete consideration of the agenda as it becomes longer with each year. This in itself is a positive sign that reflects the desire to address new problems and that it is tuned in to the world: science and technology, indigenous populations, the environment. In addition, in contrast to the economic and technical issues dealt with by the other Commissions of the Council, the field of human rights is by its very essence subject to unexpected - and frequently critical - developments whose need for urgent action upsets the agendas. The United Nations has endeavoured to rationalize the agenda in two main directions, namely, the biennial consideration of certain items and grouping items in clusters. These are steps in the right direction, but no miracles can be expected of either method.

Debates

30. A number of possible improvements to the conduct of debates in respect, inter alia, of speaking time, joint statements, possible merging of the general debate and the debate on resolutions and increased use of working groups would enhance the system's credibility. 5/

E. Regionalization: general remarks

31. In the United Nations the imprecise concept of regionalization is an amalgam of various notions: the juxtaposition of independent systems (the United Nations, the Council of Europe, the Organization of American States (OAS), the Organization of African Unity (OAU), etc.); decentralization, with varying degrees of autonomy, (for example, the United Nations Regional Economic and Social Commissions); or simply devolution of services.

32. One is struck by the unduly centralized nature of United Nations human rights structures and machinery. There is no permanent human rights organ at the regional level comparable to the Economic and Social Commission for Asia and the Pacific or to the Economic Commission for Latin America and the Caribbean, nor any on-the-spot expert capable of playing a similar role to that of the Resident Representatives of the United Nations Development Programme and/or the Regional Advisers of ILO.

33. The United Nations has been aware of this problem since the end of the 1960s. There has been a succession of working groups and regional seminars, recently focusing on Asia and the Pacific, but with minimal results. 6/ The United Nations has not always made a clear choice among three strategies: simply promoting the establishment of endogenous regional structures that are substantively independent of the United Nations (a development it encouraged as far as the African Charter on Human and Peoples' Rights was concerned); establishing regional structures endowed with a degree of autonomy or at least a regional presence within the framework of the United Nations, or lastly, a flexible combination of these two approaches.

34. It would at least be worthwhile considering, in an initial phase, the possibility of adapting to the United Nations human rights system, the ILO system of Regional Advisers or a similar flexible mechanism. 7/ We shall revert to this point.

F. Coordination: General remarks

35. "An impossible task" - this old adage to some extent still applies as regards the coordination of human rights in the United Nations. The problem is a fundamental one that arises, like regionalization, in every sector of the programme: information gathering, research and standard-setting activity, implementation, technical cooperation and assistance to victims. Its facets vary considerably from one field to another. At this point, I shall merely make a number of general remarks.

36. First of all, if it is to achieve minimum effectiveness, coordination needs to be carried out simultaneously at three levels: between United Nations bodies through their chairmen, officers or delegates; between Secretariats, and within each State between the authorities and departments concerned.

37. Nowadays, the question of the relations among the United Nations bodies is better understood. Proof of this is the periodic meetings, institutionalized for the past six years, of the chairpersons of the treaty

bodies. 8/ Further proof may be found in the ever closer links between the officers of the Commission and the Sub-Commission respectively, and the proposals made by the Sub-Commission Working Group in 1992. 9/

38. There are two major features to inter-secretariat coordination. Although the harmonization between the Centre for Human Rights and the secretariats of the specialized agencies (ILO, UNESCO, WHO, FAO) has given rise to some problems as regards legislation and mechanisms, there is an established inter-agency structure, the Administrative Committee on Coordination (ACC) and its committees, which at least recommends guidelines for coordinated action. Such was the case, for example, with ILO in respect of forced labour, migrant workers, indigenous populations and the employment of children.

39. In contrast, no comparable permanent coordination machinery has yet been set up within the United Nations itself; hence, the questions that for a certain period of time arose about programmes dealt with simultaneously by the Centre for Human Rights on the one hand and by the Advancement of Women Branch or the Crime Prevention and Criminal Justice Branch in Vienna on the other. Ad hoc arrangements have occasionally been developed or are being developed.

40. Resolutions have recently been adopted specifically designating the Centre for Human Rights as the coordinating organ for the field of human rights as a whole. The implementation of these resolutions is going ahead, but is still far from complete.

41. Lastly, coordination between the national departments concerned is as necessary as it is ill-perceived.

42. Differences of opinions on a particular issue have occasionally been observed between the representative of a State in the Commission on Human Rights and his opposite number in the Commission on Crime Prevention and Criminal Justice or the Commission for Social Development. For example, the position of the representative of the same State on the Fifth Committee - this has also occasionally occurred - might be based on budgetary considerations, which are at odds with the wishes of either of the Commissions.

II. RESEARCH AND STANDARD-SETTING ACTIVITY

43. Proclaiming international standards based on sound comparative research continues to be a vital mission of the United Nations. Reservations may be heard here and there - international law has been "completed", an end should be made to "academic" studies and the "profusion" of texts, and absolute priority given to implementation.

44. I am persuaded that it would be a mistake to subscribe to these extreme views. The legislative work of the United Nations will never be "completed": accelerated scientific, economic and social developments produce a plethora of new problems and require innovative study in the direction of new international standards or a more detailed examination of existing texts. Less than ever is it possible to ignore the role of universal standards in the dynamics of society, surrounding the myth on which human rights repose; the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples that enabled the third world to achieve its independence, just as the

Peoples that enabled the third world to achieve its independence, just as the Helsinki Declaration, reasserting the Universal Declaration, brought down the Berlin Wall.

A. Preparatory research

45. One question of sources is one of the contemporary problems. The basic Commission on Human Rights resolution of 20 March 1956 fully authorizes recourse to the "writings of recognized scholars and scientists". 10/ However, United Nations studies containing an analysis of external research are rare - and it would seem to be becoming increasingly rare, although some studies on science and technology and armed conflicts are among the exceptions. Studies frequently confine themselves to replies by States papers from international organizations and contributions from non-governmental organizations in consultative status in answer to requests by the author for information. This self-restriction deprives the United Nations of a vital view of the world of research and contributes to perpetuating the closed environment image, detrimental to the system's credibility.

46. Similarly, United Nations seminars or symposia the conclusions of which have been selected as the basis for standard-setting are relatively infrequent. The exceptions include a 1960 seminar in Vienna which led to the study and the draft principles on the right of everyone to be free from arbitrary arrest, detention and exile. 11/ Symposia with substantive and innovative conclusions on the subject of population and human rights 12/ (Amsterdam 1974, Vienna 1981 and Geneva 1989), organized on the initiative of the United Nations Population Division and the United Nations Fund for Population Activities (UNFPA), in cooperation with the Centre for Human Rights, have received absolutely no attention from the Commission on Human Rights and the Sub-Commission in terms of standard-setting. 13/

47. It may be asked whether there is not a surfeit of studies. This judgement underlies numerous discussions and resolutions on methods. These criticisms may to a considerable extent seem justified. Nevertheless, we should beware of the opposite extreme, whereby this concern to keep matters within bounds might lead one to neglect new and even very important problems out of a fear of exceeding strict quotas.

48. In my opinion, inadequate programming and certain imbalances in the selection of topics are matters of greater concern than the large number of studies. At the present time, for example, one sees in the Sub-Commission a concentration on the major related topics of judicial problems and detention. These issues are still important, to be sure, but they already form the subject matter of numerous instruments, whereas the emerging sectors of "science and technology" (with the exception of the study on the environment) and "population, development and human rights", receive little attention - or none at all.

49. I would suggest that some thought might be given to setting up a small inter-institutional group, perhaps at the level of the Economic and Social Council, for planning studies ratione temporis and ratione materiae and which,

in conjunction with the Centre for Human Rights, and taking due account of budgetary considerations, would propose reviews of topics and priorities, as needed, to the Commission and the Sub-Commission.

B. Standard-setting approaches and mechanisms

50. The volume of the Human Rights "Code" adopted by the United Nations, and to some extent its substance, bear witness to remarkable efforts, frequently made with a view to innovation.

51. While necessary and enriching, this conceptual development also creates tensions and uncertainties in respect of parameters. What exactly is a "people"? and what is a people's right? What standards should govern the reciprocal relations of this right and individual rights? What dialectic can be used to overcome any conflict between these two human rights requirements? These are basic issues which the Organization has perceived but not resolved, as may be seen from the deliberations on self-determination and the right to development.

52. The uncertainty, and even anxiety of peoples as to the ethical values and priorities, which inevitably accompanies this evolution in standards may unjustly produce a relatively negative effect vis-à-vis the United Nations. The emergence of the collective dimension of human rights is indeed often linked by public opinion to the image of the United Nations which pioneered this development.

53. In order to assuage these uncertainties which are prejudicial to the efficiency of the system, intensive analysis and clarification are needed on the part of the system itself. The United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Institute for Training and Research (UNITAR) and the United Nations University (UNU), inter alia, should play an active role in that task.

54. Does the large number of instruments increase the likelihood of ambiguities and conflicts where standards are concerned? No doubt, but the danger may be limited within the United Nations, first, because of the factors for conceptual harmonization provided by the Charter, the Universal Declaration, the Covenants, General Assembly resolution 32/130 and other texts which may be regarded as founding instruments in the field of human rights in the United Nations. In the spirit of those instruments, and in order to remove doubts, the systematic adoption of safeguard clauses should be encouraged guaranteeing, as in article I (2) of the 1984 Convention against Torture, the pre-eminence of "any international instrument or national legislation which does or may contain provisions of wider application".

55. Another, and in my view more serious, problem stems from the frequently overly general and ambiguous wording of United Nations human rights standards. This characteristic very often leads national administrators and magistrates to reject or ignore the United Nations treaties - and a fortiori declarations - as "non-law". How could a magistrate, particularly magistrates from countries with a written law, not be disoriented by laconic concepts such as

being "arbitrarily" deprived of life (International Covenant on Civil and Political Rights, art. 6) "arbitrary" detention (idem, art. 9(1)) or an "adequate" standard of living (Covenant on Economic, Social and Cultural Rights, article 11(1))?

56. The International Court of Justice could theoretically spell out human rights law in the United Nations system. It has done so on a number of occasions, mainly in an advisory capacity, particularly with regard to the Convention on Genocide and on the question of Namibia. However, it can only be seized in matters of dispute by agreements between States, and the latter for various reasons, do not seem to be particularly willing to make it the supreme arbitrator of human rights.

57. The large number of reservations and declarations of interpretation to human rights treaties tend to create difficulties. The Covenants and the Convention on the Elimination of All Forms of Discrimination against Women are cases in point.

58. The problem is compounded by the often very vague content of the reservations. The frequently ambiguous reactions of the co-signatories to the reservations, which in themselves often do not constitute clear objections, further complicate the situation. These two failings - the vagueness of formulation and the plethora of reservations - tend to lessen the credibility of the United Nations as a standard-setting body. In order to avoid them, would it not be advisable to turn towards other methods?

59. One of the strategies which is being tried out is that of "à la carte" treaties. A minimum hard core of articles co-exists with optional clauses which offer signatories choices that are sometimes very varied; reservations are increasingly often ruled out. Some ILO conventions and the European Social Charter, for example, have used this method.

60. Another approach would seem to merit serious consideration, namely, the division of major issues into specific topics of limited scope, each the subject of a separate treaty - an incremental process allowing of no reservations. Generally speaking, this was the method followed, inter alia, by ILO.

61. Although the United Nations often gives priority to the major framework treaties, it has also used strategies similar to the step by step method. Mention may be made, for example, of the two Conventions on statelessness and the series of treaties on the rights of women which preceded the major Convention against discrimination. It might well be that the process is being resumed with the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty and the work being carried out on a protocol to the 1984 Convention against Torture concerning a preventive system of visits to places of detention.

C. Legislation, regionalization and coordination

62. An in-depth analysis of the relations between universalism on the one hand and cultural diversity on the other does not come within the purview of this study. We may simply note that the continuing "doctrine" of the United Nations seems to be an act of faith in the harmonization of these two requirements.

63. However, there are fairly numerous variations, and even some contradictions, in the substantive clauses, between United Nations instruments and the regional texts. There is, for example, the stress placed on collective values, by the African Charter which is not found, or at least not to the same extent, in the Covenants.

64. The differences seem sharper between the American Convention on Human Rights of 1969, article 4 of which, for example, protects the right to life "from the moment of conception", and the International Covenant on Civil and Political Rights. The clause on the right to life "from the moment of conception" had been deliberately rejected by the United Nations during the discussions on article 6 of the Covenant. 14/ The travaux preparatoires for the Pact of San José and the case law of the Inter-american Commission do tend to minimize the seriousness of this divergence, although the problem persists in the texts themselves. 15/

65. Sharper conflicts in standard setting between the universal and the regional have been averted thus far by means of coordinating activities mainly of an informal nature - prior consultations between chairmen and at the Secretariat level, project exchanges and the presence of observers from other international systems in the preparatory work. It has proved particularly useful that several members of United Nations bodies have also been members of regional committees (and vice versa).

66. While maintaining our faith in the unity of humankind, we should be aware of temporary centrifugal trends which may emerge; as of now we should be considering how to strengthen coordination between universal and regional standard setting, as far upstream as possible.

D. Future trends and planning of the United Nations standard-setting programme

67. The innovative trends which the United Nations long followed in its role as a pioneer in standard-setting may seem less apparent at the present time. The comments made earlier concerning studies may be mentioned here; they apply equally to the stage of the elaboration of texts, mutatis mutandis.

68. To give only three examples: the Commission on Human Rights recently transferred the substance of its work on standard-setting in science and technology to the United Nations University; it seems to have suspended its work on popular participation and pays no attention to the standard-setting proposals made by United Nations symposia on population and human rights despite the resurgence of interest in these three major topics throughout the

world. It is therefore encouraging to note the interesting content and the innovative aspect of the suggestions made to the Preparatory Committee on United Nations future work on standard-setting. Specific suggestions concerned, for example:

Human rights and science and technology in general; 16/

Human rights issues in health, including those raised by advances in medical science and technology (WHO); 17/

The human rights of the very old; 18/

The right to a nationality (UNHCR); 19/

Domestic violence; 20/

Traditional practices affecting women and children. 21/

69. As has been suggested in connection with studies, it would be desirable in our opinion to set up a small advisory group of inter-institutional government experts, working in conjunction with the Centre for Human Rights to elaborate a coherent and balanced standard-setting programme.

III. MONITORING AND DETERRENCE

A. Organization

70. There are two related problems which exclusively, or primarily, concern the monitoring and deterrent bodies - the financing of the bodies set up by the treaties and their multiplication.

71. The conventional rule which requires the States parties rather than the United Nations budget to be responsible for all or part of the financing (CERD, art. 8 (6), CAT, art. 17 (7)) creates considerable embarrassment for the bodies in question and tends radically to restrict the duration and number of sessions. The problem is further aggravated by considerable arrears in the payment of contributions. The ensuing semi-paralysis of the Committee on the Elimination of Racial Discrimination and the Committee against Torture reflects most adversely on the credibility and efficiency of those bodies. These problems have been clearly identified and a number of solutions envisaged. 22/ Significant progress was made in 1992 when meetings of the States parties of CERD and CAT approved amendments in order to budget the financing of these bodies. 23/ Ratification - which is uncertain and in any case not rapid - by the requisite number of States parties and the approval of the General Assembly in accordance with established procedures still remain to be obtained.

72. Another group of problems of particular concern to the monitoring bodies stems from the recent increase in their numbers, the fact that they coexist, often without clearly-defined hierarchical links, and the frequent overlapping of their competence ratione materiae. In addition to the seven permanent

treaty bodies within the United Nations, there are also the investigatory committees and special rapporteurs - thematic and country - also increasingly numerous since 1980.

73. Some people have criticized this situation as virtual anarchy. Unification may seem tempting, from the viewpoint of rationalization, a consideration which often appeals to lawyers and management experts. However, the analogy with ILO Committee of Experts - the success of which is fully admitted - is not completely relevant for a number of reasons, including the fact that this Committee is basically concerned with reports from Governments, while the Human Rights Committee and the Committee on the Elimination of Racial Discrimination and other United Nations treaty bodies have the double mission of considering reports and considering complaints. To be completely accurate it should be noted that, in the ILO at least three complaints procedures are handled by bodies other than the Committee of Experts.

74. In addition, the risk of conflicting decisions within the overall United Nations system has proved, to date at least, less great than might have been feared. This is partly because the members of those bodies all come from a fairly limited group of experts in international human rights law who often occupy or have occupied a variety of posts in the system.

75. The simultaneous attention given by different bodies to the same types of problem does not necessarily create confusion, duplication or contradictions. Experience seems to prove that it may, on the contrary, through exchanges and emulation between bodies, enrich human rights concepts and strengthen the awareness of them by public opinion. The in-depth exploration of the concept of "torture" by the jurisprudence of the European Commission and the European Court of Human Rights, the Human Rights Committee and the Inter-American Commission may be mentioned in this regard, for example.

76. Last but not least, the unification of those bodies, involving the unification of procedures, would tend to work against the victims of violations. Although nowadays they benefit from a number of international remedies, they would have to wager everything on a single "throw of the dice" vis-à-vis a single body. Access to the international system is still so arduous in procedural terms that the number of different mechanisms seems to be the minimum compensation due to the victims.

77. Genuine problems are nevertheless raised by the present profusion of bodies. It is important to minimize their impact, particularly by reinforcing coordination.

78. The efforts made in this regard since 1986 have been fairly substantial - meetings of persons chairing treaty bodies, now institutionalized, 24/ systematic dispatch of observers to the sessions of other treaty bodies, 25/ and the joint meeting in 1991 between CERD and the SC. 26/ Note may also be taken of the measures to encourage the harmonization of decisions of substance, such as the publication in a single document 27/ of the general comments and recommendations by treaty bodies and the elaboration of consolidated guidelines for the initial part of all reports. 28/

79. However, this continues to be inadequate. It would be advisable to institutionalize a number of measures and render them more frequent, such as coordination meetings between treaty bodies and statutory bodies such as the CHR, the Commission on the Status of Women and the SC. The scope of such measures should be systematically extended to the appropriate investigatory groups and the special rapporteurs (e.g. the Rapporteur on torture and the CAT, the Rapporteur on economic and social rights and the CESCR).

80. The coordinating network should, in the second phase include those United Nations bodies whose activities partially involve human rights.

81. An additional strategy for harmonizing monitoring - and remaining costs - consists of encouraging members to belong to two or more committees and in making provision for them to meet in succession at the same venue. This is the solution selected for the CAT, in relation to the Human Rights Committee, in accordance with article 17 (2) of the Convention. This strategy contains a number of positive aspects. Its disadvantage, if taken too far, would perhaps be to encourage what is virtually a monopoly of persons already members of a committee and to restrict the influx of "new blood".

B. Encouragement of treaty ratification

82. Encouraging States to ratify United Nations treaties on human rights, with the aim of attaining universal acceptance of these treaties, is an important aspect of the strategy for the international realization of human rights. While ratification is not all that is needed - the overly-optimistic view that accession to a treaty is an end in itself must be avoided - it generally constitutes a significant step towards the effective implementation of international standards. In particular, ratification tends to strengthen the monitoring process by subjecting States to the procedures laid down in the treaties.

83. The Charter imposes no obligation on States to ratify. We can at most see it as indicating an obligation to provide means, implying a need for attention to and diligence in ratification as an integral part of the concept of "cooperation" in accordance with Article 56. Unlike other constitutions of inter-State organizations, the Charter of the United Nations establishes no specific machinery for encouraging ratification by States. However, the general power of the United Nations to call for "reports" from its Members (e.g. Article 64) might enable the Organization to ask States to furnish, in a spirit of cooperation, information on progress made and obstacles encountered in ratifying treaties.

84. It is on this rather fragile legal basis that the Sub-Commission, by its resolution B (XXXII) of 1979, decided to establish each year a working group to encourage ratification of or accession to treaties. Governments were invited to inform the group - in writing, but also orally, at public meetings - of the circumstances which had prevented or delayed ratification.

85. By this novel procedure it was possible to obtain a rough typology of the failures to ratify, which revealed - or gave indications of - East-West and North-South ideological differences, as well as other obstacles due to such factors as the constitutional structure of the State, the complexity of the

internal ratification machinery, administrative unwieldiness, the inadequate level of expertise and the absence of coordination within state administrations and the influence of certain interest groups and traditions.

86. This working group having completed its task, the principal conclusion of both the Commission on Human Rights and the Sub-Commission was that there was a need to expand United Nations advisory services and technical assistance in order to help States to accelerate the ratification process. This is certainly an essential aspect and there would seem to be some justification for the optimism of the Sub-Commission, which saw the strengthening of advisory services in this sector as a major factor in the "acceleration" of ratifications (Sub-Commission resolution 1992/1).

87. It would be an over-simplification, however, to treat this problem simply as a matter of technical assistance. Whether it is openly recognized or not, a certain element of international dissuasion remains necessary - in addition to assistance - if the accession of States to human rights instruments is to be secured. This dissuasion element could be noted, subtly presented and masked by the broad concept of free "cooperation", in the Working Group's public dialogue with the representatives of States. This procedure had been accepted de facto, despite a number of reservations of principle, by almost all the Governments concerned.

88. However, the embarrassment created for several States by certain of the Working Group's findings that revealed major deficiencies may serve to explain the Working Group's "quiet" disappearance. This would appear to indicate the present limits of international activism confronted with one of the last bastions of State sovereignty.

89. The working group method has now been replaced by a combination of "informal discussions" held by the Secretary-General and a public report analysing the difficulties encountered, the preparation of which has been entrusted to a member of the Sub-Commission working on the basis of written information from States (Sub-Commision resolution 1992/1). The resolution stresses the importance of advisory services as an essential strategy in order to persuade States to ratify human rights treaties, and it appears to assign less priority than in the past to the strategy of critical debate.

90. Unfortunately, the number of replies received from Governments appears to have decreased in recent years and many replies seem less than explicit.

C. Periodic reports

91. In the field of human rights, as in other fields, by far the most commonly used method of international monitoring is the consideration of periodic reports from Governments.

92. This procedure, as it has developed in practice, pursues two complementary aims. In the first place it aims, on the basis of the written report and following a critical dialogue with the Government, to identify as accurately as possible, at a given time, both the positive aspects and the difficulties and to persuade the State to overcome the latter. Secondly, the periodic reporting method - and this is its novel aspect,

compared with other mechanisms - should enable regular comparisons to be made over time for a given country, as well as current and long-term comparisons between countries having similar problems. In theory, therefore, the procedure may help to identify the major human rights trends and problems, by country and by group of States. Taking account of the lessons of the past, it might to a certain extent permit the development of human rights "forecasting" and help in the development of a violation-prevention strategy as far upstream as is possible.

93. Do the present periodic reporting procedures meet these expectations?

94. An initial difficulty - one which is rarely noted - relates to the scope of the reporting systems. Despite the large number of them, they do not cover all the internationally recognized human rights. Among the rights which are not dealt with or are covered only partly are the right to own property and the right to family planning. This is due to the fact that the reporting systems are established on a limitative basis for the particular rights and groups of rights defined in the instrument by which they are set up, i.e. the Covenants. As human rights concepts and problems evolve more rapidly than the United Nations standard-setting systems, there is a widening gap between the two processes. Thus limited in its scope, the reporting system is liable to become less efficient. Human rights are interdependent and ignoring some of them distorts both the measurement of other rights and the analysis of global trends.

95. It would therefore have been preferable to retain the optional, non-treaty reporting system established by Council resolution 624 B (XXII). The advantage of this system lay in its globality ratione materiae, the human rights with which it is concerned not being strictly defined. In 1980, upon the initial recommendation of the Secretariat and in response to budgetary considerations, the General Assembly, by its resolution 35/209, terminated the comprehensive non-treaty reporting system as being "obsolete, ineffective or of marginal usefulness". 29/ I share the view of a minority of specialists, including Professor John Humphrey, the first Director of the Centre for Human Rights, 30/ that this decision was a fundamental strategic error.

96. Another weakness of the treaty reporting system is the fact that it limits the sources of information. There is nothing in these treaties that expressly allows account to be taken of information other than that contained in the reports of Governments. The drafters of the treaties seem mostly to have been opposed to expanding the sources of information beyond these limits.

97. The treaty clauses concerning coordination with the specialized agencies of the United Nations (ILO, UNESCO, WHO, etc.), or even the mere exchange of information, are inadequate and unclear. Some improvements have been introduced in practice, but much remains to be done. 31/ The meeting of chairpersons of treaty bodies rightly emphasizes the need for "direct dialogue" with competent officials from the agencies concerned, 32/ a dialogue that has so far been observed only in a few bodies. 33/

98. The inadequacy of the coordination is even greater in the case of the reporting procedures outside the United Nations system (European, inter-American, African, etc.).

99. A contribution by the NGOs in consultative status to the treaty system of reporting would enrich it and ensure a better appreciation of the reality of human rights. The negative attitude to this that has been taken in the preparatory work, as well as the continuing hostility of several members, due to fear of a political drift, have long inhibited an opening of the bodies concerned to the NGOs.

100. Some progress has been made recently, however, first by the Committee on Economic, Social and Cultural Rights, whose status as an organ of ECOSOC more readily legitimates access by NGOs in consultative status, at least in writing, 34/ and then in the rules of procedure of the Committee against Torture, 35/ and, in August 1991, in the Committee on the Elimination of Racial Discrimination. 36/ Nevertheless there is still considerable reluctance to take this course, as is shown by the rejection by the Committee against Torture of a proposal to allow the NGOs to make statements at public meetings. 37/

101. The opening towards the NGOs is, in itself, a positive development. However, in order to optimize the credibility and effectiveness of the reporting system, each body should, in a rationalized normative effort, specify the manner in which this opening should be effected, in harmony with the spirit of the reporting procedures. 38/

102. An important step forward, reflecting both a general desire for rationalization and a desire for an indirect opening towards the NGOs, was the new guideline adopted by the Human Rights Committee in 1990, under which a State which the Committee has found to be in violation following communication of a complaint in accordance with the Optional Protocol, would be invited to "explain" in its report what action has been taken in response to the Committee's findings. 39/ This essential "follow-up" method was developed a long time ago by ILO in the form of a "to-and-fro" between the Committee on Freedom of Association, the body for the consideration of complaints, and the Committee of Experts on the Application of Conventions and Recommendations, the body for the consideration of reports.

103. This trend towards dialogue should not stop at the level of the NGOs. It should be regarded as legitimate - and to some extent as a power "implicit" in the treaties - that the bodies concerned should seek information and views from outside experts, at least for the purpose of clarifying and supplementing the governmental reports. Even the contributions of the media should not necessarily be excluded. It would, of course, be necessary to lay down guidelines for such contributions, in order to preserve and demonstrate to the public the objectivity, impartiality and orderliness of the process.

104. The initial steps taken by the Committee on the Rights of the Child, the body set up by the relevant Convention, are of interest. The Committee, which actively consults the NGOs, has established a Technical Advisory Group

including United Nations system agencies such as UNICEF as well as NGOs, which transmits information on the implementation of the treaty in various countries. This information is of help to the Committee in giving advice and technical assistance in accordance with article 45 (b) of the Convention.

105. The growing number of reporting procedures in recent years will undoubtedly tend to impair their effectiveness. The risk of duplication and conflict, as well as the risk of a slowing-down or even paralysis of the governmental departments and United Nations bodies concerned, as well as the increasing financial cost of this trend, have been clearly perceived, by the four meetings of chairpersons in particular.

106. The extreme solution of a merging of the bodies and procedures must be rejected, for the reasons given above in section A of the present chapter.

107. These problems show the need for a strategy of rationalization and coordination that will respect the diversity of the existing instruments. Such a strategy has been initially apparent, as far as the substance of reports is concerned, in the adoption of consolidated guidelines for the initial part of reports. 40/ This is a useful reform, although probably limited in scope. A greater improvement would be the establishment of an effective system of references in reports to other reports, or even references in reports to other sufficiently recent documents issued by the United Nations. The responsibility for this would lie first of all with the State and, additionally, with the monitoring body and its secretariat. The principle involved seems quite simple, but it is proving difficult to implement.

108. Developing countries - as well as some other countries - often lack the technology and resources that are required for developing a "memory" of their reports and establishing the necessary coordination between their different government departments.

109. The Secretariat's Centre for Human Rights certainly does not have the resources that would be needed in order to make good the deficiencies of States and to introduce itself a general referencing system of the bodies concerned.

110. Computerization of the system of reports, as well as of other sectors of the international implementation of human rights, would enable major progress to be made.

111. It is therefore all the more regrettable to note the small amount of the contributions so far received by the Voluntary Fund for the financing of the United Nations database referred to in General Assembly resolution 45/85, pursuant to the recommendations made in 1990 by the Task Force on Computerization. 41/ Only two countries have made such contributions. 42/ The suggestion made at the fourth meeting of chairpersons that private bodies might be asked to contribute should be carefully considered, having regard to the need to preserve the system's impartiality and its appearance of impartiality in the eyes of the public. 43/

112. There has, as we have seen, been some progress in coordination between bodies on the question of reporting, as well as on other aspects (periodic reports by chairmen, the sending of observers to sessions of other bodies), but it is still insufficient. The coordination should be extended, we emphasize, to the non-treaty periodic reporting procedures of the Commission on Human Rights and its Sub-Commission.

113. The enormous delays in the submission of reports and the superficial or very incomplete nature of many of the contributions are not due exclusively to the burden imposed on States by the many demands or to the inadequacy of resources. There are other, non-quantifiable factors involved: fears of pressure on State sovereignty and/or cultural identity; concern about loss of status or power by particular public authorities or influential social groups; rivalries between these various centres of power, which might fear an alliance between their rivals and the international bodies; and underestimation of the benefits of full cooperation with the United Nations under the reporting systems, following "dialogue" with the international bodies concerned, a dialogue which often leads to suggestions for new solutions to human rights problems, derived from the experience of other countries having similar situations.

114. What remains essential is realization of the advantages of international cooperation in reporting that should result from training courses and other technical assistance activities, over and above technical training (in cross-referencing, coordination, databases, drafting, etc.). It is essential for these United Nations training activities to be directed towards all the parties concerned - governmental and other, such as the social partners and national NGOs. While workshops at the national level are required, they should not, in our view, be accorded priority that would be detrimental to regional, subregional and global activities. 44/ These activities are vital for expanding the exchange of experience on the basis of comparable situations.

115. Of particular value is the idea that a list of those States which most need assistance should be drawn up by the United Nations bodies and that offers of assistance be made to those States, as suggested by the chairpersons.

116. Another suggestion made by the chairpersons is that, where there are persistent delays on the part of a State, the bodies concerned should proceed to consider the situation solely on the basis of "other appropriate sources of information", including information from NGOs. 45/ This suggestion deserves to be considered most seriously. The idea might be worthwhile, provided that the State is given every opportunity to participate, that the alternative sources really appear to be reliable and that the various views expressed during the consideration of the information are communicated, before their publication, to the State concerned, to enable it to make any comments it wishes.

117. A last problem - and by no means the least - is the very inadequate communication to the public of information on the system of submission of reports by their Government and on the deliberations in the bodies established to consider these reports.

D. Complaint Procedures: Quasi-judicial Complaint Mechanisms

118. When first introduced, the individual complaint procedures adopted by the United Nations were - and to a large extent still are - the most revolutionary in the spectrum of international procedures for the protection of human rights. They challenge the doctrine of sovereignty by reducing the State to the role of defendant, to be judged by its peers, confronted by its own citizen, and a subject of, or at least a procedural party to, the law of nations.

119. The three procedures of this kind in the United Nations are embodied in the Optional Protocol to the International Covenant on Civil and Political Rights, article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 22 of the Convention against Torture. In my view, they deserve to be called "quasi-judicial", despite the lack of an international court whose decisions would have the force of res judicata, as individual referral compels the examining body to rule on a case-by-case basis, at least as far as admissibility according to predetermined legal criteria is concerned. The word of such bodies, however humble, is "law".

120. It is important to distinguish between quasi-judicial procedures, which might be called "appeal communications" or "complaint communications", and mechanisms whereby the complaint is accepted purely and simply as an item of information. An example of this second type is the procedure under Economic and Social Council resolution 1503 (XLVIII) (see under E below). According to these mechanisms, the information/complaint does not necessarily lead to the resolution of an individual grievance, as it has only the status of information and its author is not party to the proceeding. The vagueness of United Nations instruments conceals this distinction, thereby raising false hopes regarding resolution 1503 and lowering the credibility of the United Nations implementation system.

121. The quasi-judicial mechanisms themselves are now well established and are creating a useful body of "case law". The United Nations of course has had to "pay" for this success by appeasing States with substantial concessions. These take the form not only of the reassuring nature of the terminology used ("communication", rather than "complaint"), but also the optional nature of the mechanisms; the precariousness of accessions; the stringency of admissibility criteria; the procedural inequality between State and complainant; and the non-legally binding nature of the conclusions.

122. The innovative practice of examining bodies - thus far essentially that of the Human Rights Committee - has, in many respects, exploited this fragile and narrow legal basis to the full. 46/ An example is the acceptance of complaints submitted, even without authorization, by a close relative of the victim on his behalf. The Committee's practice has also proved favourable to victims with the partial transfer of the burden of proof to the defending State, as far as the prior exhaustion of internal remedies and the determination of the actual or "illusory" nature of such remedies is

concerned. In the Bleier v. Uruguay case 47/ and other cases, the Committee was quite explicit as to the fundamental duty of the State, under article 4 (2) of the Protocol, to conduct a genuine inquiry in good faith "clarifying the matter".

123. Perhaps the Committee's most far-reaching innovation was the development, on a very slender legal basis, of a follow-up procedure. The States parties to the Protocol have now generally accepted the Committee's invitation to report on the action taken on its conclusions, and a growing number of countries have responded positively. A further and potentially even more significant advance was made in 1990, when the Committee revised its guidelines regarding reports by inviting the State concerned to explain in its periodic reports the action taken on the Committee's findings on individual complaints.

124. However, the United Nations appeal-communication procedures are still highly inadequate in other respects.

125. Firstly, the scope of the procedures covers only a very limited number of rights, mainly civil and political rights, and the general rule of non-discrimination. We subscribe fully to the suggestions for extending the individual complaint mechanisms to the International Covenant on Economic, Social and Cultural Rights. 48/ The reasons given in 1966 for not applying those mechanisms to such rights appear ill-founded. Experience of the procedures under articles 24 and 26 of the ILO Constitution and of the ILO freedom of association procedure has shown that it is possible for a quasi-judicial body to reach a finding on the will of States to implement progressive clauses such as those of the International Covenant on Economic, Social and Cultural Rights, as well as on their conduct with regard to the immediately applicable International Covenant on Civil and Political Rights.

126. Another set of problems is raised by the vague nature of a number of admissibility criteria, which lend themselves to arbitrary interpretation. Examples are the criteria of "abuse of the right of submission of such communications" and of incompatibility "with the provisions of the Covenant", mentioned in article 3 of the Optional Protocol and in other instruments. They smack of the era of grace and favour or of the "king's pleasure".

127. For a time, the Human Rights Committee seemed to be exhibiting worrying tendencies. Instead of declaring the old criteria obsolete, it invoked what appeared to be a new admissibility criterion not included in the Protocol, namely, that of "non-substantiation", although in 1966, the General Assembly had specifically rejected that criteria. 49/ These tendencies to create additional obstacles should be subjected to careful examination and to the exercise of legal precision, in order to rein them in and rationalize the whole admissibility procedure on a basis which is more equitable for victims.

128. It should, however, be pointed out that, since its inception the Human Rights Committee has declared admissible only about 50 per cent of the complaints submitted and not withdrawn. 50/ This contrasts with the very much greater severity of the European Commission of Human Rights in respect of admissibility. 51/

129. Another weakness in these procedures stems from the fact that the practice of amicable settlement between the parties is overlooked by the instruments and by the rules of procedure of the examining bodies. It is particularly regrettable that the Human Rights Committee has not specifically asserted its competence to determine whether the withdrawal of a complaint following an amicable settlement has been voluntary. An article along those lines, proposed in the Secretariat's preliminary draft rules of procedure, was rejected by the Committee in 1977. 52/

130. This shortcoming contrasts with the European Convention system, which provides parties with a formal conciliation procedure under the auspices of the European Commission and under which conciliation agreements, as well as informal amicable settlements, are subject to examination by the Commission.

131. The question of "amicable" settlements reached under various types of pressure is one aspect of the general problem of intimidation of victims, witnesses and advisers in international dispute procedures which bring them into opposition with States. This question, which has long been cloaked in a coy silence, is beginning to receive the necessary exposure in the United Nations. On the basis of numerous NGO reports, the Commission, in its resolution 1991/70, invited the Secretary-General to report on such allegations and requested examining bodies to take "urgent steps" to prevent such practices. 53/

132. The Human Rights Committee recognized the existence of these problems in two cases in 1987 and 1989 for example, 54/ describing such actions as "grave violations" of the Covenant. However, to our knowledge, it does not seem to have adopted special procedures according, for example, high priority, urgency, or maximum publicity to complaints of intimidation. It is important for the Committee to move rapidly in that direction, following the example of other bodies in the United Nations (e.g. the Working Group on Enforced or Involuntary Disappearances) and in ILO.

133. The main weakness in appeal-communication procedures - and one which it has in common with other mechanisms - is the absence or acute shortage of emergency mechanisms. This crucial question is dealt with further in the general observations in chapter I.

134. The diligence of the Committee in arriving at conclusions on both admissibility and substance in respect of 25 to 30 complaints in the course of its two or three short annual sessions cannot, of course, be denied. In assessing the average examination time of slightly more than two years, allowance must be made for the statutory period of six months for States to comment on the substance and the limited time devoted to communications at each session.

135. Nevertheless, this length of time is totally unsatisfactory in view of the urgent nature of many cases: death sentences, substantial allegations of torture, inhuman treatment, serious and irreversible discrimination, etc.

136. Increasing the number of sessions and the measures taken to facilitate the convening of special sessions 55/ must of course be encouraged. However, budgetary difficulties present substantial, if not prohibitive, obstacles in this regard.

137. The most practical and perhaps the most effective emergency strategy would be to follow three courses of action: publish a clear but not exhaustive list of the main types of emergency, which in itself would have some deterrent effect; define special procedures for priority and expedited consideration, outside the usual "first come first served" approach and with very short response times; last but not least, delegate to the chairman, to the officers, to a rapporteur or to the Secretariat a number of functions which they can perform between sessions.

138. The European Commission, the Inter-American Commission and the ILO Committee on Freedom of Association have adopted these strategies, in various forms.

139. Again by contrast, the United Nations has long refused to delegate the least inter-sessional power. The proposals made along those lines for the Human Rights Committee during the drafting of the Covenant 56/ and the adoption of the rules of procedure 57/ were all rejected.

140. Only in the last three years has the Committee taken steps in this direction with the appointment of a special rapporteur to request a suspension as an interim measure in the case of death sentences; 58/ the authorization of the Working Group unanimously to declare a complaint admissible without reference to the Committee; 59/ and, in particular, the appointment of a special rapporteur to perform some initial procedural functions between sessions, basically the transmittal of complaints to the Governments concerned for comments on admissibility. 60/

141. This trend should be intensified by assigning to the officers of the Committee or to a rapporteur inter-sessional duties similar to those in effect under regional systems. This shortcoming on the part of the United Nations is highly detrimental to the credibility of its procedures.

142. Finally, the information and publicity gap, a general failing within the United Nations, is adversely affecting quasi-judicial complaint procedures.

E. Complaint procedures: The "1503" complaint/information procedure

143. Of all United Nations complaint procedures, this would seem to be both technically the most defective and by far the most popular. According to official estimates, some 120,000 communications are still received under this procedure each year by the Secretariat, despite the existence of the procedures under the Covenant and other treaties. 61/ The following brief analysis will attempt to explain this apparent paradox.

144. Attention has frequently been drawn to the defective aspects of the procedure. One problem of major importance is the lack of clarity in the resolution regarding its aim and distinctive legal characteristics. As stated in section D above, the 1503 procedure is designed not to settle individual

disputes, but to gather information on situations appearing to reveal "a consistent pattern of gross ... violations of human rights", which tends to preclude the complainant from acquiring the status and rights of a "party" to the proceedings. The many disappointments experienced in this regard serve to intensify the wave of scepticism about the system as a whole. Greater efforts must therefore be made by the United Nations, its Secretariat and NGOs to educate and alert the public. One of the aims of the compilation of "United Nations action in the field of human rights" should be to illustrate more clearly the complaint/information character of the 1503 procedure.

145. One of the most frequent criticisms of the 1503 procedure, which also applies to other monitoring mechanisms, is that unjustifiable selectivity is used in identifying targets. However, as a result of unrelenting activity on the part of human rights protection groups and NGOs, and the effects of inter-state rivalries expressed both in private and in the public debate on violations under Council resolution 1235 (XLII), the range of countries monitored by the United Nations has grown considerably since 1970.

146. Other well known criticisms regarding the extreme opacity and slowness of the procedure seem justified. The requirement of confidentiality, beyond the initial provision of information to the Sub-Commission, appears to conflict with the basic aim of the mechanism. Taking refuge in a dialogue behind closed doors, from which even the complainant is excluded, limits the range of information sources in the extreme. The credibility of both the investigation of gross violations and the procedure are thereby reduced.

147. Admittedly, in some instances, cases have been "declassified" by the Commission, most of them involving countries where regimes guilty of gross violations have recently been overthrown. I associate myself with the suggestions made for the World Conference that more cases should be declassified. 62/ Another major reform would be to increase the complainant's participation, if only as an informant, at least by communicating to him the content of the Government's reply and by letting him know whether, or grosso modo to what extent, his complaint has been taken into consideration.

148. With such defects, might not the 1503 procedure be considered unnecessary, and as duplicating the public debate on violations under Council resolution 1235 (XLII) on the one hand, and treaty procedures on the other?

149. That to me seems a spurious argument and one which is dangerous for human rights.

150. The public debate on violations is obviously of crucial importance (see under F below). By virtue of the lack of legal specificity, States can, de facto, transfer the debate from behind closed doors under Council resolution 1503 (XLVIII) into a public meeting under Council resolution 1235 (XLII). This assumes that they have the political will to do so. However, if no State or NGO agrees to take up the case - an assumption which is by no means far-fetched - violations and victims are completely obscured in the public debate.

151. The treaty mechanisms are in themselves more credible than the 1503 procedure. However, there is no duplication, since, in the first place, the conventions are not universally accepted. Three of the five Permanent Members of the Security Council have not ratified the Protocol on communications. Over and above this, treaties guarantee only the limited number of rights recognized when they are adopted.

152. This highlights a major advantage of Council resolution 1503 (XLVIII), namely, the wholesale implementation of all human rights which are internationally accepted or may become so in the future.

153. Further advantages derive from the very liberal nature of the criteria of admissibility, which are open to any person or group, even those which are not victims. 63/

154. Eliminating the 1503 procedure, therefore would not in my opinion be a forward step. Let us endeavour to improve it by responsible practice, but let us keep it, if only to complement treaties and public debate.

F. Complaint procedures: the public debate on violations

155. The overriding merit of this procedure, introduced in 1965, on the basis of a series of resolutions, including Economic and Social Council resolution 1235 (XLII), is that it is public and involves a wide range of participants - States, intergovernmental organizations and NGOs in consultative status. The impact of this adversarial debate conducted before the public and the media obviously could not be greater.

156. However, this public debate is not an end in itself, since it leads increasingly to assessments of the conduct of States in the form of specific resolutions, and to the establishment of investigatory mechanisms (see under G).

157. The criticisms levelled at the 1235 procedure are that the discussions are frequently superficial, lacking in objectivity and highly polemic, that there are underlying political pressures and that the decisions are highly selective. These criticisms would appear to some extent to be well-founded.

158. Measures are being taken or contemplated to reduce these difficulties. The secret ballot requirement in the Sub-Commission is, in our view, an important step forward which should be preserved and extended.

159. As for the question of selectivity, we repeat that the presence of NGOs and inter-State rivalry, whose effects are increased ten-fold in public debate, has brought the number of States which are being monitored and are the subject of specific resolutions from three in 1968 to 20 or so in the present decade. This number is higher if countries against which serious accusations have been made in the debate, but which are not the subject of resolutions, are included.

160. With a view to making the process more orderly, less politicized, more objective and more effective, emphasis has been placed by some on the duty of the Sub-Commission and the Commission, not only to debate, but also to

"report" on violations (Commission resolution 8 (XXIII), para. 2). It has been proposed, for example, that the Sub-Commission should set up a working group to draft such a report on the basis of the public debate, with the report itself to be discussed in public. 64/ The report would be used to identify the main trends in violations and thus help to ensure the follow-up of decisions. Thus far, no consensus has been reached on this proposal. 65/ It is clearly deserving of further consideration.

161. The positive aspects of this procedure, even unamended, should not be overlooked.

162. Although little has been made of the fact, Council resolution 1235 (XLII) and the related texts, unlike Council resolution 1503 (XLVIII), do not limit the debate to consistent patterns of gross violations. A violation of human rights may be an isolated occurrence, but of sufficient intrinsic gravity to warrant the attention of the United Nations. It is this interpretation which seems always to prevail in the United Nations under Council resolution 1235 (XLII), in spite of dangerous attempts to restrict its scope to large-scale violations.

163. Moreover, the letter of some relevant resolutions could, in some circumstances, leave open the possibility of targeting non-State bodies.

164. In conclusion, even if there was no other positive aspect and despite its anti-legalism and the danger of politicization, the public debate on violations must be preserved and strengthened as a key aspect, if not at present the cornerstone, of the United Nations monitoring system. More than any other mechanism, the 1235 procedure expedites the "mobilization of shame". Although it is perhaps "public square diplomacy", I fear that, without it, the silence of the grave would prevail.

G. Complaint procedures: Ex officio investigations by special rapporteurs and ad hoc groups

165. The technique of investigations by rapporteurs and Ad hoc groups established by resolutions is the most recent United Nations innovation to combat serious violations of human rights. The strict legal basis for this is the Organization's recognized authority under the Charter to undertake "studies" and prepare "reports" which, in current practice, in fact cover critical investigations and recommendations concerning States. The aim is to reach the most recalcitrant countries, not parties to treaties and refusing to cooperate within the framework of Council resolutions 1235 (XLII) and 1503 (XLVIII).

166. The controversial nature of this procedure when first introduced and the seriousness of the wholesale violations alleged, should have prompted the United Nations to give the greatest possible prominence to the image of impartiality of the bodies concerned. The credibility of some ad hoc investigations was called into question on the grounds that the members of the groups concerned, who were nominally "independent experts", had previously, as representatives of their respective countries on the Commission and at the General Assembly, voted to condemn the incriminated State.

167. This criticism seems to some extent to have been taken into account subsequently. The majority of the Commission's special rapporteurs, appointed or proposed after consultation with the regional groups, are not active members of any of the United Nations decision-making bodies concerned with human rights.

168. In recent years, the technique has broadened out. It includes investigations concerning one or more rights in particular countries - South Africa, the territories occupied by Israel, Afghanistan, Chile, Guatemala, El Salvador, the Islamic Republic of Iran, Cambodia, the former Yugoslavia, etc. - as well as so-called "thematic" procedures - centring on enforced disappearances, summary or arbitrary executions, torture and religious intolerance - which seek to identify violations of particular rights in various countries of the world.

169. The main advantage of the thematic investigation is that it allows comparisons to be made in space and in time, trends to be identified, and thereby in principle prevention facilitated. It also has the tactical advantage of avoiding the charge of selectivity that has been levelled at certain country investigations. The use of thematic investigations should therefore be encouraged, as is proposed in various commentaries for the World Conference. It would also be desirable to establish them for periods longer than one or two years, or indeed to them some permanent. 66/

170. Of these thematic investigations, that relating to human rights and emergencies deserves, in my opinion, special attention, 67/ primarily because of its virtually unlimited scope: geographically universal, it encompasses all internationally recognized human rights and those that will be recognized in the future.

171. Above all, the investigation into states of emergency is of special importance since it is at the heart of the problems of human rights and power. How is one to distinguish between the suspension of certain rights, a course which may be legitimate in a period of major national crisis, and the perversion of this concept in order to cover the worst violations? What rights other than the minimum list set forth in article 4 (2) of the Covenant should be intangible? How can victims be guaranteed the necessary remedies, including those relating to matters of substance, in periods of emergency?

172. This investigatory procedure has sought to reply to these questions in a generally dynamic and innovative manner. Not only NGOs enjoying consultative status with the United Nations but other groups and individual experts have been extensively consulted. 68/ It aims at gradually establishing basic principles concerning the protection of human rights in emergencies, elaborating on the concepts outlined in article 4 of the Covenant. This work should be undertaken in cooperation with the other competent international bodies, particularly those of the Council of Europe, the Organization of American States and the Organization of African Unity.

173. The Special Rapporteur on states of emergency, like many other thematic and country rapporteurs, is increasingly confronted with the problem of observance of the human rights recognized in United Nations instruments as well as in international humanitarian law, in time of armed conflict. Issues

relating to the harmonized implementation of both categories of international standards to ensure the maximum protection of individuals had formed the basis of interesting general studies by the Secretariat from 1970 to 1977 69/ and of standard-setting resolutions by the General Assembly during that period. 70/ In view of the contemporary recrudescence of serious violations in internal conflicts, for instance in Bosnia, high priority might be given to establishing special investigatory procedures aimed at guaranteeing in all specific situations of armed conflict or serious internal disturbance the most effective application, in full coordination, of United Nations and international humanitarian law instruments. Ideally, this should be a joint effort between the United Nations and the International Committee of the Red Cross, as the guardian of the Geneva Conventions and Protocols.

174. In particularly complex situations or in the case of the most serious and persistent violations, it is necessary to concentrate efforts and publicity on the one country concerned.

175. An initial positive aspect of these techniques is that they do not require the prior lodging of complaints by individuals or NGOs for them to be set in motion. This power of initiative is essential in the case of countries where intimidation is practised to the highest degree, preventing victims from having access to the international bodies that deal with complaints.

176. Furthermore, in contrast with the complaint mechanisms provided for by the treaties, the ex officio investigating bodies enjoy considerable freedom as regards their procedures: consideration of written complaints and allegations, hearing of witnesses and experts and - subject to the State's cooperation - on-the-spot investigation.

177. The more the investigation is based on a substantial body of reliable testimony, emanating from a variety of sources, the more valid it will be. Accordingly, the investigating body must first be given very wide publicity, as soon as it is set up, and people must be called on to testify. The United Nations has all too often proved inadequate in this respect.

178. Once offers to testify have been received, an objective preliminary selection must so far as possible be made of them by a member of the investigating body or its secretariat, in order to exclude persons whose testimony does not appear reliable and to weed out information already known. Although some bodies make every effort to undertake this selection systematically, others practise it only occasionally and in a very unmethodical manner.

179. On-the-spot investigations seem to be agreed to by a growing number of States. For an on-the-spot investigation to be effective, there must first be a formal, public agreement between the body and the State concerned guaranteeing in particular, in the most precise possible terms: freedom of movement for the investigators, the necessary facilities, free choice of witnesses and persons interviewed, confidentiality of interviews, and no reprisals against witnesses. In the event of a breach of the agreement that

may seriously reduce the missions's effectiveness, it must not hesitate to suspend its investigation and, if necessary, to bring it to an end if the agreement is violated persistently.

180. United Nations practice varies a great deal in this respect. Some investigating groups, such as the one concerning Chile, drew up fairly precise memoranda of understanding with the Government. In other cases, the conditions governing the visit seemed to have been decided only on the basis of a more general "understanding", which does not always receive a suitable amount of prior publicity. On the spot, certain problems in the interpretation of the "prior understanding", affecting the credibility of the investigation, concerning for instance freedom of movement or material facilities, have often arisen as a result.

181. In view of their smaller membership, investigatory bodies can move into action somewhat more swiftly than the Commission, the Sub-Commission or the treaty bodies. Their terms of reference enable them to consider fresh allegations, and no doubt to express their concern in public, at any time. As soon as the proposed measures have financial implications, however, as in the case, for instance, of the publication of an interim report, a special meeting or a fortiori an on-the-spot visit not provided for in the budget, it becomes necessary to obtain the agreement of a series of United Nations authorities, including the Economic and Social Council and ACABQ, which slows down the process. Some bodies, in particular the Working Group on Enforced or Involuntary Disappearances, have adopted special emergency procedures, known as "urgent action" procedures, but this provides only a partial answer to the problem of the emergency.

182. Here again, we come back to the need to grant inter-sessional powers, including, in extremely serious cases, certain financial powers to a body acting on behalf of a higher authority, such as the Commission, the Economic and Social Council or the General Assembly.

183. It has been said that the great advantage of ex officio procedures lies in the flexible and multiple nature of their strategies. The resolutions setting them up, drafted in very subtle terms, invite or authorize them to discharge, as and where necessary, a fourfold mission: the gathering of facts; conciliation with due regard for human rights; deterrence and assistance.

184. This flexibility is of course necessary. Every possible effort must be made to persuade the State, confidentially, to remedy human rights violations proprio motu, without losing face. States that give evidence of their goodwill must be assured that the United Nations will take certain measures to help them to achieve this aim. But, at the same time, the possibility of deterrence must always be present, in the form of a critical report discussed in a public meeting.

185. It is up to each body and each special rapporteur to exercise the maximum diplomatic skill, from persuasion to deterrence, in order to obtain the best results, subject to one condition alone: that human rights are not sacrificed for the sake of appeasement.

186. The reports so far published on investigations show that the special rapporteurs hold very different ideas about their role. Some have acted like examining magistrates, appraising testimony and the State's replies in terms of human rights principles. At the opposite extreme, other special rapporteurs or envoys seem to have regarded their task essentially as that of a psychologist using the technique of "positive reinforcement". This may take the form of a profusion of compliments, in reports, concerning even minimum progress achieved by the State, in contrast with the "art of understatement" applied to the alleged violations. Many reports combine the two approaches with the result that the main drift of the conclusions is weakened or pales into insignificance.

187. This large variety of approaches, applied to situations that frequently appear similar, disconcerts States, NGOs and the public and contributes to undermining the credibility of the procedures.

188. It would be desirable for the Commission and the Sub-Commission to endeavour to achieve greater consistency in regard to the substance and style of the terms of reference of special rapporteurs, having regard to differences in situations.

189. Significant progress has recently been made in respect of methods of operation and procedures, particularly as regards the gradual computerization of the data and findings of the special rapporteurs and their greater recourse to experts (doctors, experts in forensic medicine, etc.). There has recently been increased consultation among special rapporteurs on a particular situation. An attempt should be made to systematize this practice by holding regular meetings of investigatory bodies, which could be joined, where necessary, by representatives of the treaty bodies.

H. Effectiveness of the complaint procedures

190. To what extent have the complaint procedures examined in Parts C to G above been instrumental in putting an end to human rights violations?

191. Our answer to this question can only be approximate in the absence of a scientific system of human rights indicators, which may perhaps never be developed, and having regard to the inadequacy of international information and monitoring mechanisms.

192. Without becoming smugly optimistic, we can say that the wholly negative view of the United Nations as a mere "word factory" is a mistaken one.

193. The impact of these procedures upon the conduct of States seems indirectly evidenced by some of their attitudes: the growing interest taken in the election of the members of the investigatory bodies; the increasing cooperation, at least at the formal level, with even non-conventional monitoring mechanisms, such as the special rapporteurs and the new follow-up procedure of the Human Rights Committee; non-withdrawal from complaints systems, optional and precarious although they are, despite repeated condemnations, as in the case of Uruguay in the Human Rights Committee. It may also be said that attempts to intimidate plaintiffs and witnesses reflect a contrario the concern that offending States feel about these procedures.

194. In addition, there are signs that point to the fact that international action has contributed to changing the practices and sometimes the legislation of States. Specific and well-documented examples include the revision of the Canadian Indian Act following the "Sandra Lovelace" case in the Human Rights Committee, 71/ the amendment of the Immigration Act of Mauritius following the "Cziffra" case in the same forum, 72/ along with various administrative improvements concerning Uruguay. 73/

195. Monitoring, investigations and repeated public condemnations by the United Nations have also played a substantial and sometimes decisive role in the overall strategies leading to the restoration of democracy in Argentina, Chile, Korea, the Philippines, Uruguay and other countries. It is significant, for example, that the reports and documentation of the United Nations Working Group on Enforced or Involuntary Disappearances were among the main pieces of evidence in the Argentine trial of the leaders of the Junta.

196. It is true that the deterrent action of the United Nations was but one aspect of a multi-faceted dynamic process. The many factors at work included, first and foremost, an awareness of their dignity by the persons concerned, under the influence of national human rights defence groups; international pressure exercised by NGOs; bilateral inter-state deterrence, in varying forms and degrees; diplomatic representations, measures of cultural and political isolation, withdrawal of economic and technical assistance, commercial boycott; the positions adopted by churches and religious groups; the implementation of complaints procedures at regional level (Council of Europe, the Organization of American States OAS) and within the sectoral framework of the specialized agencies of the United Nations, in particular ILO; and lastly, the activities of the United Nations. All these efforts, as dispersed as they may be, end up reinforcing one another.

197. United Nations action has played a pioneering role in only a certain number of cases, for example in South Africa. Nevertheless, no matter how limited, it is always seen as an indispensable part of the overall strategy. It is always sought by activist groups as an essential catalyst. Why? Because of the powerful dynamic process of emulation among all member States, whose public debates, spurred on by NGOs, constitute an irreplaceable "sounding-board". The aim here is to take a decisive step towards securing worldwide legitimacy for the cause, even through the legal instrumentality of mere recommendations, expressed in the form of a unanimous condemnation by 170 States in the name of international human rights law.

198. The United Nations may have an impact on the conduct of States in two ways. In a number of cases, this action is in fact desired, if not initiated, by the State or by particular branches of the Government, which regard United Nations recommendations as a weapon in the service of their own desire for reform. Such was perhaps partly true of Canada in the "Sandra Lovelace" case.

199. The State usually resists change and modifies its conduct only when confronted by increased pressure from its own public opinion, which is supported by the international community and urged on by the deterrent action

of the United Nations which is publicized by NGOs and the media. The influence of the United Nations on the State is therefore mainly indirect, its immediate impact being on NGOs and public opinion.

200. This basic fact again brings out the extreme importance of three aspects to which public opinion is particularly sensitive: the image of impartiality of bodies and procedures; their ability to deal with emergency situations; and their potential as a medium of communication and publicity in the service of peoples.

201. In these three fields, we have seen that the United Nations procedures for monitoring and deterrence have considerable defects. However, despite these imperfections, they have some impact. If the shortcomings noted in this study were remedied, with priority being given to the three above-mentioned problems, a powerful stimulus might be given to the action of the United Nations.

I. Monitoring and deterrence: towards the third generation?

202. International human rights protection has already undergone two major changes, namely: the evolution from the pre-1919 bilateral and customary system towards inter-State multilateralism through the League of Nations and the United Nations; then from the mid-1970s, the transformation of the United Nations into a pluralist system, including, in addition to States, NGOs and individuals in the capacity of plaintiffs, exercising increasingly extensive control over the conduct of States.

203. The continuing rise in popular expectations concerning human rights, the sense of frustration inspired by the persistence of massive violations and the deep-seated suffering of the innocent, together with a new awareness of the common roots of peace and human rights, are now fuelling the quest for a third generation of international measures for the protection of human rights. These aspirations have been expressed, in particular, in the documents submitted to the Preparatory Committee. Like the Tehran Conference in 1968, which to some extent ushered in the second major change, the World Conference in 1993 would constitute the best forum for tracing a first outline of the United Nations in the third millennium.

1. Early preventive action

204. The United Nations cannot wait for fires to break out before doing anything about them. It is realized more and more clearly that preventive action is necessary, at the earliest possible stage.

205. A comprehensive periodic report on the main practical problems and the main trends in human rights in the world would be an essential aspect of this strategy. 74/ It should include all available sources of information in the system: periodic reports, occasional reports, findings of bodies responsible for handling complaints, and submissions by States, intergovernmental organizations and non-governmental organizations. Additional recourse to the work of outside experts should also be encouraged.

206. Such a project calls for extensive computerization of the United Nations system.

207. The reporting body should be composed of independent experts elected by the General Assembly on the basis of criteria calling for competence and impartiality, and in accordance with equitable geographical and cultural distribution.

208. Effective prevention would also require the closest possible continuous monitoring of actual situations. United Nations advisers for human rights, somewhat like ILO's regional advisers, 75/, should be present at the regional, subregional or even national levels and perform a dual function of monitoring and assistance in a confidential dialogue with Governments. These tasks should be carried out in cooperation with the permanent representatives and missions of UNDP, the specialized agencies and other intergovernmental organizations. The adviser would submit an annual report to the Secretary-General, who would report to the committee of experts responsible for the overall report.

209. Admittedly, this represents a considerable innovation, but we do not see any viable alternative. The desired integration of the human rights dimension into the plans and activities of UNDP and the United Nations Regional Commissions seems to be at a standstill. Furthermore, the United Nations Information Centres, which should partly assume this role, have generally been reduced to a discreet silence and do not have sufficient resources at their disposal.

2. Better targeting

210. Complaint procedures like technical assistance operations (see Chapter IV below) increasingly highlight the important and sometimes decisive role of non-State entities in the perpetration of massive violations of human rights: rebels and terrorist groups, individuals responsible for summary executions and torture, and transnational corporations responsible in particular for serious environmental damage and the maintenance of unfair working conditions.

211. The operation of supranational entities like the European Communities may also create human rights problems for the citizen. They were the subject of an initial discussion, organized by the European Parliament and the EEC Commission, in November 1989 in which I was a very interested participant. 76/

212. United Nations procedures for the protection of human rights, dominated by a traditional view of international law centred on the State, are not usually targeted on these non-State entities. Nuremberg law, affirming the direct criminal responsibility of persons and associations, has so far been no more than a parenthesis, which was soon closed when the Charter was adopted in 1945.

213. Consequently, in extreme cases, deterrence is trapped in a vicious circle. The State, to which the United Nations addresses its exhortations, pleads its helplessness, which is disregarded in the ensuing condemnations. True, the State should not be absolved without proper thought, and the

slightest hint of passive complicity on its part should be taken into account. It would however be just as unrealistic and dangerous to deny decisive transfers of guilt, in some cases, from the Government to parties outside their control. 77/

214. The main, or indeed only, response of the United Nations to this problem has so far been to step up technical assistance to weak States in order to "strengthen their infrastructure" against internal forces hostile to human rights. Such a response is necessary and important, but it is not enough. Until such time as the assisted State gives clear evidence of its increased strength, international deterrence against the perpetrators of atrocities that set themselves up as independent powers cannot be placed on hold.

215. The Geneva Conventions and the Protocols thereto took an important first step forward by affirming the international responsibility of all the parties to armed conflicts, including organized groups of insurgents.

216. In the same spirit, a number of recent United Nations resolutions call on all the parties to internal disturbances and civil wars to respect human rights.

217. It is essential to explore and extend this approach. As stated earlier, Economic and Social Council resolutions 1235 (XLVII) and 1503 (XLVIII) could perhaps offer a means of including non-State entities.

218. The ultimate objective should be to adapt the United Nations system of deterrence as a whole, including as far as possible treaty procedures, to the necessity of assigning direct international responsibility to unsupervised non-State entities.

3. Urgent action

219. Several commentaries for the Preparatory Committee emphasize this aspect and highlight the shortcomings of the system in cases of emergency. 78/

220. The reader is referred to what was suggested earlier, in Part I and in this Part III. Some of the inter-sessional powers of existing bodies are, it should be repeated, essential.

221. Some commentaries go further and advocate that existing bodies be established on a permanent basis or that a new standing monitoring body be set up, such as the Office of a United Nations High Commissioner for Human Rights. This question has already been discussed in great detail by the United Nations for many years.

222. If a body of this kind were to be envisaged once again, the extent of its powers in regard to States and in regard to existing international procedures would need to be strictly defined.

223. For the reasons set out in III.A above, we are not in favour of all the bodies being merged into a single superstructure. There is a danger that this would make the system of persuasion more unwieldy when the aim is to streamline it. Most importantly, it would deprive the victims of the

possibility of several remedies, which is crucial considering how limited is the range of means available to them for defending their rights at the international level.

4. Towards an international criminal court?

224. Nuremberg law was excluded from the Charter of the United Nations and the Organization's activities, largely through the paralysing effect of the East-West "cold war".

225. Now that this major source of tension no longer exists, work can be resumed, in particular in the International Law Commission, on establishing an international criminal court.

226. Such a court should have the power to attach criminal sanctions to massive and particularly serious violations of human rights committed by individuals, including political leaders, and associations. Such violations would be regarded as crimes analagous to the "crimes against humanity" or "serious violations" of the Geneva Conventions, but without being necessarily linked to any armed conflict.

227. The establishment of a permanent international criminal court can be contemplated in accordance with a great variety of approaches and rules. In order to guard against a proliferation of bodies, it could be seen as a division of the International Court of Justice. In any case, certain principles should be considered fundamental, and first and foremost, so it seems to me, that of effective access by individuals to the court.

228. The existing bodies - the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, special rapporteurs - should not however be abolished. They could become examining and conciliation bodies, with cases being referred to the court - by individuals, among others - only in the event of recognised failure.

5. Towards a revitalized International Court of Justice?

229. Leaving aside the question of the jurisdiction of an international criminal court which would continue to be exceptional, efforts should be made to revitalize the International Court of Justice with regard to international human rights law. Its importance in this field has been greatly reduced by its continuing loss of favour in the eyes of States. The Secretary-General's recommendations to strengthen the action of the Court 79/ should be supported.

230. It would have the power to give a ruling on problems of human rights, and thought should be given to also vesting in it the power to order compensation for individuals whose rights have been violated (Cf. the European Court).

231. Ideally, the International Court of Justice should be competent to hear cases submitted by individuals and NGOs, either directly, or through one of the existing bodies (Human Rights Committee, Committee on the Elimination of

Racial Discrimination, Committee against Torture, rapporteurs, etc.) to which individuals already have access. This would be a system similar to the two-stage system of the European Commission.

232. The possibility should be envisaged of introducing such a reform either by amending the Statute of the Court or, perhaps, by recognising through protocols the power of the treaty bodies to request, or to invite the General Assembly to request, advisory opinions from the Court.

6. Collective sanctions for massive violations of human rights

Role of the Security Council

233. Recourse, under Chapter VII, to mandatory sanctions to protect human rights - diplomatic and economic sanctions and, as a last resort, the use of armed force by the United Nations - has sometimes been tried at the United Nations. In order to justify such recourse, reference has rightly been made to the basic link, recognised in the Charter, between the maintenance of peace and respect for human rights.

234. These attempts have been only very partly successful in the past: the economic blockade on the Smith regime in Rhodesia, the embargo on offensive weapons for South Africa.

235. The recent events in Iraq and Yugoslavia and some of the Security Council's decisions concerning those regions have led to some slight hope. There has been talk in their connection of the emergence of a "right of intervention" or indeed of a duty of intervention by the United Nations for massive violations of human rights. An analysis of these decisions and of the preparatory work for them would seem, however, to indicate a continuing concern to link economic activity and the sending of United Nations armed forces essentially to the question of the free conveyance of humanitarian assistance to the Kurdish minorities on the one hand, and to the besieged Bosnian towns, on the other. Sanctions or warnings in respect of human rights violations are not involved, at least not expressly.

236. Support should be given to the recommendations of the fourth meeting of chairpersons of treaty bodies 80/ aimed at encouraging the Security Council to take into account, on a continuing basis, major human rights problems as helping to create a likely and serious risk of a threat to peace.

237. The United Nations monitoring and deterrence bodies should be encouraged to bring such situations to the attention of the Security Council. They could in any case do so through the General Assembly, which has statutory relations with the Council (Arts. 15 and 16 of the Charter). The Secretary-General could bring such situations to the attention of the Council at any time, under Article 99 of the Charter.

IV. PROMOTIONAL ACTIVITIES: INFORMATION, EDUCATION, TECHNICAL COOPERATION

A. Information

238. After its establishment, the United Nations had serious shortcomings in communicating with the outside world. Its human rights activities, involving standard-setting and implementation, were conducted in a vacuum.

239. As from the early 1970s, the General Assembly and the Commission on Human Rights grew more aware of this "information gap". 81/ The activities of the Centre for Human Rights, in conjunction with the Department of Public Information, were appreciably reshaped and emphasis was placed on expanded public information programmes.

240. These activities take various forms, described in the Secretary-General's reports to the Commission, such as distribution of the main United Nations human rights instruments in a larger number of national and sometimes vernacular languages; preparation and circulation of clear and practical fact-sheets on the main programmes and machinery; efforts to make greater use of audiovisual methods; seminars and workshops; and increased human rights documentation distributed to the United Nations Information Centres. 82/

241. Various signs appear to indicate that this revival in activities, especially for the World Public Information Campaign on Human Rights, launched in December 1988, has already had some positive effects. 83/ The Secretary-General's report mentions, among the signs that have emerged since 1988, the rise in requests for technical assistance; an exponential increase in the number of complaints submitted under Economic and Social Council resolution 1503 (XLVIII); the increasing number of treaty ratifications; the important place held by human rights in replies to certain opinion surveys; the greater proportion of articles on United Nations human rights activities in the press abstracts and summaries of works in the archives of the United Nations Library; and the increasing demand for publications by the Centre for Human Rights.

242. To take a realistic view, however, the matter is very often one of proportion rather than actual figures, which are still very low. For example, only 2 per cent of the 1.3 million wire service stories in the NEXIS database in 1987 contained a reference to the United Nations. 84/ The 5,000-addressee mailing list prepared by the Centre for Human Rights for the distribution of its printed material still seems rather small. 85/ It should none the less be pointed out that the Centre has made considerable efforts, particularly since 1988.

243. To make greater headway, I would suggest that more attention should be paid to three aspects of the human rights information programme.

1. From diplomatic consensus to calls for mobilization

244. The compromises that underlie consensus in multilateral circles produce, as we have seen, texts that are often too general, ambiguous, cumbersome in style and complicated. Translating this coded language into something clear and simple on which peoples can draw inspiration may be likened to an impossible task.

245. The difficulty is not simply one of wording. It is also political. Extracting the meaning of a text in plain language implies in varying degrees, but at all times, a choice between the elements that make up the consensus. The choice may displease a particular State or pressure group. For example, what meaning should be placed, in connection with the problem of abortion, on the preambular paragraph of the Convention on the Rights of the Child which affirms the right of the child to legal protection "before as well as after birth".

246. Such risks should be taken into account by the persons preparing United Nations brochures and communiqués - both Secretariat and consultants - and by State departments and NGOs in their own popularization material. The resulting inhibitions tend to some extent to put a brake on the understanding and motivation of those for whom they are intended.

2. Concrete examples

247. United Nations instruments and procedures, which seem abstract and abstruse, take on life for the public only when concrete examples are used. This method should be adapted, depending on the target group, using an inductive pedagogical approach that will tie it into their day-to-day problems.

248. The Secretary-General's reports point to efforts in this direction, in the shape of, for example, national or local workshops organized in cooperation with the NGOs concerned. The impression gained, however, is that United Nations human rights information activities are still too abstract and are too close to the excessively general letter of the text.

249. This problem is particularly acute in the Organization's relations with the media. With a few exceptions - Le Monde and the Journal de Genève in the French-language press, the Guardian and a few other newspapers in the English-language press, the media speak of the United Nations human rights programme only in the case of events regarded as sufficiently sensational, such as the East-West debate in the Commission on Human Rights over the draft telegram concerning Sakharov's internal exile and the human rights situation in Iraqi Kurdistan and in Bosnia.

250. The United Nations Department of Public Information should consider the possibility of writing more concrete press communiqués and promptly holding press points for the media for such events. The Centre for Human Rights could give fuller descriptions, in its press conferences, of United Nations procedures for such exceptional events.

3. Role of the United Nations Information Centres

251. The Information Centres usually suffer from an acute shortage of staff. During the "cold war" they were also held back by extremely cautious guidelines from the Department concerning relations with local human rights defence groups.

252. In such conditions, which are beyond their control, the Centres, despite their efforts and talents, still do not properly play their information and public relations role in regard to human rights.

253. A considerable, and essential, increase in their financial resources and in qualified staff would be made easier by establishing a voluntary fund or by expanding the existing Voluntary Fund for Technical Cooperation in the Field of Human Rights.

254. Furthermore, the cold war has now disappeared and an attempt should be made to relax the traditionally restrictive guidelines concerning their relations with NGOs.

255. Lastly, a training subprogramme for staff at human rights centres could be envisaged in connection with the Secretariat's in-house training activities.

B. Human rights education

256. Human rights education, separate from though close to certain traditional kinds of teaching (ethics, civics, religious instruction), is still something new, and emerged well after the Second World War.

257. The United Nations has displayed its interest in this matter, more particularly since the adoption of General Assembly resolution 2445 (XXIII), in 1968. The programme of advisory services has a large "education" component.

258. However, UNESCO is the United Nations agency with special competence in regard to education. In this regard, it has developed an overall human rights education programme worked out largely on the basis of fruitful exchanges at two World Conferences (Vienna 1968, and Malta 1987).

259. The World Conference on Human Rights will doubtless benefit greatly from the conclusions of the Third UNESCO World Conference on this topic in March 1993, in Montreal. It is not advisable to prejudge the conclusions reached by this Conference, and merely a few general comments are needed.

260. The concept of human rights education encompasses a number of different types of teaching. The approach and methods should be suited to the considerable differences in age, traditional culture, occupational status and general education of the target group.

261. However, a difference in teaching implies a difference in teaching staff. Only rarely, for example, can a professor in a law faculty teaching a doctorate course in international human rights law easily adopt the inductive

method and concrete approach needed to reach out to the illiterate population of a rural area. Training a number of kinds of teachers required to implement a number of kinds of programmes involves considerable social costs. This difficulty is compounded by the non-financial difficulty of the hostility of various established authorities (political, religious, university, corporatist) towards this new, multidisciplinary and disturbing kind of education.

262. For this reason, in many cases priorities will have to be established and choices made between various educational methods. Should the first thing be to train the instructors or to stimulate a meaningful attitude in the family unit, where the basic values are inculcated? Would it be better to start with the kindergartens and primary schools or to lay emphasis on human rights training for people in key posts?

263. Such choices would have to be made for each country, in cooperation, if desired, with the United Nations and UNESCO, which are able to offer the benefit of a broad range of experience.

264. The United Nations has already published a standard manual for human rights instruction at the primary and secondary levels. 86/ The United Nations and UNESCO are considering the joint preparation of a manual for teaching human rights in universities. 87/ A Working Group met at the United Nations Office at Geneva in September 1991 to draft a teaching manual on human rights for schools of social workers. 88/ It would be desirable for this to be followed by standard programme components for other essential sectors: adult further education, including rural areas, and special training manuals for judges, policemen, lawyers, the media and other "key posts", including people in the media.

265. Greater attention should be paid to special human rights for people in the media, as a matter of high priority.

266. The fact - one so clear it has become a cliche - is that the technical advances are such that mass access by peoples to communications makes for an exponential growth in the impact of the media in shaping attitudes and society. The influence of the media is probably greater than the influence of the school, in a number of societies, and this will soon become a problem in the third world, as it now is in the developed world.

267. Yet the media, to a very great extent, are unaware of the human rights issue. This is a major obstacle, for their indifference acts as a brake on a proper realization of the problems at stake. Worse still, some audiovisual programmes glorify violence or other anti-social attitudes and others are at variance with human rights values.

268. Such mistaken ideas could not be rectified by censorship or a "moral" type of opposition. One priority strategy should be to incorporate a large "human rights" component in the professional training and retraining of people in the media in the broadest sense: press agencies, written press, radio and television, government press attaches, public relations specialists and persons in advertising.

269. Human rights values and major issues should be taught in professional schools and institutes, using an educational approach and method suited to the demands of the journalist's profession. It would be pointless, for instance, to proclaim United Nations rules ex cathedra as "Revealed Truth", by urging the congregation to spread the "Good Word" in their articles. On the contrary, case studies should be used to show the major impact of these rules, or violations of the rules, on the big events which have hit the headlines in recent years: the fall of the Berlin Wall, the Yugoslav tragedy, Cambodia, Somalia, El Salvador, and so on. With this concrete point of departure, the people in question could be asked to rewrite their articles or scripts around human rights problems, which were previously eclipsed because they were "non-events". They would then be encouraged to use this approach in doing their job. The students, it is to be hoped, would then gradually find out for themselves that the "human rights" ingredient does not diminish the interest of their creative work but enrich it, and might even over the medium term broaden their circle of readers and televiewers.

270. At the institutional level, it would be advisable for this human rights education for journalists to be part of the final examination and to count for graduation purposes. This important observation also holds true for all other special training (judges, lawyers, policemen, and so on).

271. Few countries seem to have introduced such programmes in their professional training centres for the media.

272. One major reason is the fear of a political slant in this kind of teaching. In actual fact, human rights instruction cannot and should not ignore the citizen's right to political participation in government. Mindful of this essential link, the State is often inclined to see subversiveness in human rights teaching in the key sector of the media and is therefore hesitant about introducing such programmes or in helping in the ones already prepared by private institutes. Journalists fear exactly the opposite: indoctrination by "Official Truth". Getting out of this impasse would, among other strategies, first involve a freely-reached agreement on teaching programmes between the State, the professional associations concerned and any associations of media users (subscribers to the written press, televiewers, etc.).

273. The United Nations and UNESCO have understood these problems now for a number of years. They were discussed at, for example, the United Nations Conference on Freedom of Information, held in Geneva in 1948, and in the United Nations sub-commission on this matter. The latter body was done away with in the early 1950s, unfortunately, and the Commission, like the Sub-Commission, have not discussed these problems since that time.

274. UNESCO has, admittedly, developed a substantial aid programme for the third world countries to develop endogenous information enterprises. However, inasmuch as such assistance programmes, over and above the quantitative element, try to suggest certain material for the teaching programmes, they seem to run into major difficulties. Mutual distrust at the national level, as described above, increases tenfold at world level, in a field in which the greatest fears of East-West and North-South political exploitation and cultural imperialism prevail.

275. The UNESCO Conference on Human Rights Education and Democracy, in Montreal in March 1993, like the World Conference itself, should pay great attention to this matter and promote the idea of special workshops, with the active participation of media employee associations and user associations.

C. Advisory services and technical cooperation

1. Encouraging requests for assistance

276. The programme of advisory services in human rights, as set up in 1955, was for a long time put to only very slight use. A large number of international or regional seminars, involving key persons in the implementation of human rights, were held and reached conclusions that sometimes proved very fruitful for the United Nations standard-setting programme (for example, in regard to criminal justice and science and technology). A modest programme of fellowships was developed. However, very few requests had been received from States for the services of experts and other forms of assistance in order to promote respect for human rights in specific matters.

277. This failing lay, and still lies, in the fear among States that they will expose their weaknesses and lose prestige in the multilateral world.

278. This obstacle has been circumvented to some extent as an indirect result of United Nations deterrent monitoring procedures. A growing number of requests for human rights technical assistance were received by countries which, under previous regimes, had been greatly traumatized by massive violations of human rights: Equatorial Guinea, Uganda, Bolivia, Guatemala, Haiti, and so on.

279. The needs of countries which have recently returned to democracy in eastern Europe also seem to call for an open attitude to United Nations technical assistance programmes.

280. Inevitably, some States are tempted to use their own weakness and the fact that they are being assisted as alibis for persistent human rights violations. This risk has been clearly perceived by the Secretary-General 89/ and by the United Nations deliberative bodies, which have long monitored former delinquent States and have not hesitated - in the case of Guatemala and Haiti - to place some States receiving assistance once more in the ranks of the accused. Constant vigilance is essential, right from the moment the assistance programmes are devised.

281. The success of United Nations human rights assistance programmes cannot be made to depend essentially on such an exceptional requirement as a return to democracy. The purpose of the system of assistance should first of all be prevention.

282. Accordingly, the problem is to encourage countries which are not in a distressing state to take advantage of multilateral aid. To this end, formulas should be devised to cut down as far as possible their fear of "losing face".

283. I would in this regard suggest a redirection in the strategic approach. Foreign aid in human rights, whether bilateral or multilateral, has so far been designed as a one-way transfer of the best performance to the worst, of the "Plus" to the "Minus". It should, on the contrary, be presented as an exchange of experience between equals, under United Nations auspices.

320. With this new direction, the system could by and large, operate as follows. With a periodic invitation by the Secretary-General to all Member States, each Government could send him a two-part reply stating (a) the human rights fields in which it considers that it has made the most marked specific advances, and (b) those in which it would like to find out the experience of other countries in order to solve its problems. These replies - which might refer, where appropriate, to periodic reports submitted under other systems - should be accompanied by a concise description of national institutions and procedures and lists of experts available for transfer of the country's positive experience to others, in the context of the United Nations system.

284. The United Nations might thus be in a better position to gauge world needs and resources and effectively adapt them with the agreement of States, which would be regarded as being, at one and the same time, the active agents and also the beneficiaries of the programme.

285. Introducing such machinery would not seem to call for any amendments in the relevant resolutions, since it would be a method of implementation and not a review of principles.

286. Major efforts at diplomatic persuasion should unquestionably be undertaken to secure consensus on such a programme. A number of seminars and workshops at various levels would be needed. Nevertheless, a suggestion of this kind might command the attention of the Conference, the United Nations bodies concerned and the Secretary-General, and regarded as opening up prospects for a comprehensively and consistently responsive system.

2. The principle of proximity in needs assessment and project formulation

287. Although the reports of the Secretary-General contain few details on this subject, it would seem that needs are assessed and projects formulated at Geneva, through agreements between the Centre for Human Rights and the States concerned, at high decision-making levels and in a centralized manner. The guidelines for appraising project viability are described by one of these reports as an "internal document". 90/

288. A country's actual needs would be better identified if these initial operations were to be carried out largely in the field, through consultation between the government services concerned and local representatives of the United Nations advisory services programme.

289. There are no such permanent representatives at present. The system has to rely on the views of UNDP's regional or local offices and on the conclusions of many preparatory missions of the Centre's staff to the country.

290. As we have already suggested above, the establishment of a network of regional or subregional United Nations advisers on human rights liaising with UNDP would, in our view, be a considerable step forward. It would be desirable to reassure countries by emphasizing that these advisers would not have an adversarial role but would act as consultants, in a confidential manner, for the State as well as for the United Nations.

3. Programming strategies

291. The reports of the Secretary-General tend somewhat to give the impression of activities that are very worthwhile and at times innovative, but also rather difficult to fit into a coherent strategy, both geographically and in terms of the various human rights aspects. It is hard to see what priorities have been established.

292. This impression may discourage States from participating in the programmes, as donors and as users.

293. The declared willingness of the Centre for Human Rights to elaborate "model programmes" 91/ and a "review mechanism" for programmes 92/ is therefore to be welcomed.

294. Programmes have recently been aimed at national institution building, in particular through projects to establish national centres for documentation and training in the field of human rights. 93/

295. However necessary it may be, this readjustment should not lead to neglect of exchanges of experience through subregional, regional and international seminars and workshops. These must remain at the core of the system, as an irreplaceable factor for an outward-looking approach.

296. In addition, some activities seem to focus too little on specific experience of human rights problems. This could be said, for example, of fellowships to attend the still very general courses offered by some international human rights institutes or training centres. There is no substitute for enabling the student to observe the actual functioning of a human rights institution at the national level. Such practical knowledge must, of course, be combined with sound knowledge of United Nations institutions and procedures.

4. Coordination

297. The Secretary-General's efforts aimed at coordination with UNDP, UNESCO, UNITAR and various other institutions 94/ must be intensified. They should be developed not only at the centre but especially in the field. This is all the more necessary as UNDP has itself broadened its objectives by adopting the global concept of "human development", which relates in part to the field of human rights. 95/

5. The problem of evaluation

298. The absence of well-established and publicized criteria and procedures for programme evaluation, both at the national level and within the United Nations, is a very major problem. This problem exists in all fields of technical assistance, but it is very complex in such an ambiguous and controversial field as human rights.

299. Here, too, the establishment of a network of permanent regional advisers on human rights would undoubtedly enable substantial progress to be made in the formulation of suitable evaluation criteria and procedures.

V. GENERAL CONCLUSIONS

300. How far have the United Nations succeeded in encouraging States and individuals to respect human rights? Although our study cannot offer an exhaustive, precise and quantified reply to this question, it does provide the basis for a general assessment of the situation.

301. It is first necessary to recall the limitations imposed by the Charter: where human rights are concerned, the mission of the United Nations is to be construed as an obligation to provide the means rather than to deliver results. Fulfilling that mission must involve cooperation among sovereign States, not the erection of a supranational structure.

302. Despite these limitations, the United Nations has made considerable progress. It has won universal recognition for the international legitimacy of human rights. In other words, to an increasing extent, States, other authorities and individuals are adopting as a fundamental ethical and legal frame of reference the standards proclaimed by the Universal Declaration of Human Rights and expounded in the instruments that followed.

303. This is being reflected in Government attitudes in a variety of ways. Human rights are tending to be cited as frequently as other objectives, such as the national interest, economic development and the preservation of peace, in the statements made in the General Assembly, at summit meetings and elsewhere. The United Nations human rights treaties, which are being ratified at an faster pace, will soon be universal. Much national legislation incorporates United Nations standards, sometimes verbatim.

304. Even more significantly, many States are actively cooperating with the United Nations in the context of non-conventional mechanisms, such as the system of special rapporteurs; and no Government, even among those most heavily criticized, has withdrawn from a United Nations monitoring system.

305. Various factors underlie this trend, not least the rising popular demand for personal dignity and fulfilment, the fruit of progress in communications and education, and the renewed awareness of the fundamental link between peace and human rights. Among these many factors, the catalytic effect of the pluralist public debate at the United Nations, where the conduct of States

is constantly being tested against universal standards, has, in my opinion, played an essential role in the worldwide legitimization of human rights. Thanks to the United Nations mechanisms centred on public debate, a "good mark" for human rights has become a priority objective of inter-State rivalry.

306. However, despite this proclaimed legitimacy, we have seen a recrudescence of mass atrocities, which often appear to be linked with inter-ethnic or inter-cultural conflicts, while the widespread persistence of structural inequalities, at both national and international level, also contradicts the ideal of the Universal Declaration.

307. Is the effectiveness of the United Nations merely an illusion? Systematic scepticism would be as misplaced as foolish optimism. The Organization has shown itself to be effective by placing the legitimacy of human rights at the centre of inter-State relations; but the next step must be for this legitimacy to become entrenched as a human rights culture.

308. The legitimacy of human rights is still too feeble to withstand the formidable forces sometimes unleashed by nationalistic or xenophobic passions, fear and hatred of the other or the powerful interests behind unjust socio-economic structures. More precisely - and this is peculiar to our century - it is always invoked, but often perversely. Thus, human rights, in the guise of the right of peoples to self-determination, have been cited in an attempt to "justify" the "ethnic cleansing" in Bosnia. Again, the right to emigrate has been invoked in support of the "brain drain", which is preventing the third world from exercising its right to development.

309. This perverse application of human rights standards is facilitated by the vagueness, ambiguity or incompleteness of too many United Nations instruments (see Part II). To close these loopholes, the United Nations should adopt standard-setting strategies leading to much more precise rules, which limit or rule out reservations. It should regularly study the new problems of human rights, as well as the re-emergence of old ones (for example inter-ethnic tensions), in order to identify guidelines for solving them. Effectively defending human rights means knowing what rights one is fighting for.

310. Another major weakness of the United Nations system of deterrence is the inadequacy or non-existence of emergency mechanisms (see Part III). The perpetrators of mass atrocities commit them with all the more confidence when they know they can count on any response by the United Nations coming too late. By the time their actions have been investigated and condemned, the situation appears irreversible (for example the mass expulsion and expropriation of one ethnic group by another) and evidence and witnesses have disappeared. The question of urgency is becoming more and more critical as technical progress in weaponry and communications makes violations more frequent. Overcoming its traditional mistrust, the United Nations should delegate effective inter-sessional powers to the chairmen or officers of the bodies concerned.

311. The effectiveness of the United Nations is also reduced by the frequent use of the same techniques - discussion, investigation and critical recommendations - which are applied to every infringement, whatever their degree of seriousness. Like every other system of deterrence, that of the

United Nations should be graduated and provide severe legally-binding penalties - diplomatic and cultural exclusion, economic boycott, and even United Nations military intervention under Chapter VII - for Governments found guilty, after investigation, of a pattern of massive violation of human rights.

312. The Charter does not lend itself readily to such measures. Recourse to the Security Council under Chapter VII, which has been increasingly used during the last 10 years in connection with human rights problems, has the advantage of rapid intervention and the possibility, in some circumstances, of mobilizing powerful resources. In this respect, the end of the cold war between East and West affords certain opportunities. However, to be entirely credible, recourse to the Security Council should avoid any arbitrary selectivity. In this connection, despite the end of the cold war, the right of veto will always constitute a major obstacle when the State charged with violations is one of the five Permanent Members or one of their close allies. Setting up an exceptional "hors veto" system for serious violations of human rights, such as genocide, would require the amendment of the Charter which, under present conditions, remains purely de lege ferenda.

313. More frequent recourse to the International Court of Justice is certainly desirable, at least in the minimal form of advisory opinions. However, with respect to human rights, the Court could be truly revitalized only by throwing it open, directly or indirectly, to suits brought by individuals, which would involve the amendment of the Statute. At present, however necessary, such a development would also appear to be de lege ferenda.

314. Like the Nuremberg law, the fairest and most effective system of deterrence would include, in addition to measures against the States concerned, penalties for both individuals and associations and bodies guilty of the most serious violations of human rights. Such penalties could be imposed by a permanent international criminal court, in response to charges brought - directly or indirectly - by the victims, to the extent that the action taken by the State was deemed inadequate. A court of this kind is already envisaged in certain human rights treaties. Setting one up would not require the amendment of the Charter. The new political hands dealt at the multilateral table, reflected in the resumption of work at the International Law Commission, mean that such a project need no longer be perceived as laughably unrealistic.

315. The penalty system should be backed up by preventive monitoring and early warning mechanisms. At present, such mechanisms are almost non-existent. Creating them should be one of the highest priorities of the United Nations in the field of human rights. In my opinion, really effective prevention would involve the periodic publication of comprehensive reports on the human rights situation throughout the world, together with the presence in the field of regional and subregional human rights advisers, who would give Governments their opinion and act in liaison with the UNDP regional and local offices and the specialized agencies concerned (see Part III, last section).

316. However, no international monitoring and deterrence system, even one with powers of prevention, could bring about a lasting and profound change in attitudes and behaviour. For this to happen, the legitimacy of human rights

must become a human rights culture. To this end, in this second phase of their campaign for human rights, the United Nations and UNESCO should develop a broad technical assistance and education strategy. At present, we can discern only the sketchy outline of such a policy (see Part IV). Human rights education, in particular, should be rethought and specifically readapted to the cultural and vocational diversity of those to whom it is addressed. It should be delivered as close as possible to the human rights "battlefields", for example by encouraging the dispatch of young trainees to the United Nations missions in Bosnia, Cambodia and Somalia.

317. An impossible task? Perhaps. But it is the price which must be paid if our descendants are one day finally to realize the promise of the Universal Declaration "in a spirit of brotherhood".

Notes

1/ For example, the report (not a United Nations document) by the working group of the Special Committee of Non-governmental Organizations on Human Rights on the "role of NGOs and the working methods of the Commission on Human Rights and of the Sub-Commission", 1991.

2/ See, for example, A/10235, para. 116.

3/ See, for example, E/CN.4/1990/49, para. 1.

4/ See the first report of the Committee to the General Assembly, A/32/44, paras. 77-80.

5/ For example, the conclusions of the Working Group on the methods of work of the Commission on Human Rights (*inter alia* E/CN.4/1984/73 and preceding documents), the Working Group on the methods of work of the Sub-Commission (E/CN.4/Sub.2/1991/16, 1992/3 and Add.). See also the report of the Working Group of the Special Committee of Non-governmental Organizations on Human Rights, 1992.

6/ See, for example, E/CN.4/966 and Add.1 - ST/TAO/HR38 - ST/HR/SerA,4 and General Assembly resolution 34/171. Resolutions on this subject have subsequently been adopted at each session of the General Assembly and of the Commission on Human Rights.

7/ A/CONF.157/PC/6/Add.3, recommendations by ILO to the Preparatory Committee, *in fine*.

8/ See, the reports of these meetings, and in particular A/45/636 and E/CN.4/1989/62.

9/ E/CN.4/Sub.2/1992/3 para.15 "B".

10/ E/CN.4/727.

11/ See ST/TAO/HR.8 and United Nations Publication, Sales No. F.65.XIV.2.

12/ See United Nations Publication, Sales No. F.75.XIII.5; ST/ESA/Ser.R/51 and ISEA/P/AC.28.

13/ These meetings are not even mentioned in the volume "United Nations Action in the Field of Human Rights".

14/ A/C.3/SR.820.

15/ See, for example the conclusions of the Commission in the affair "Catholics for Christian Political Action v. United States" (1981), quoted in Burgenthael, T. and Norris, R., Cases and Materials on the American Convention on Human Rights, 1987.

16/ A/CONF.157/PC/46/Add.8.

17/ A/CONF.157/PC/51.

18/ A/CONF.157/PC/46/Add.7.

19/ A/CONF.157/PC/49.

20/ A/CONF.157/PC/32.

21/ A/CONF.157/PC/24.

22/ See, for example, A/44/668, paras. 66-99.

23/ HRI/MC/1982/2, paras. 10 and 11.

24/ See Commission on Human Rights resolution 1991/20 and 1992/25 and General Assembly resolution 46/111.

25/ HRI/MC/1992/2, para. 16.

26/ Ibid. para. 18.

27/ HRI/GEN/1.

28/ HRI/MC/1992/2, para. 24.

29/ United Nations publication, Sales No. E/83.XIV.2, p. 325, para. 22.

30/ See, for example, the lecture given in September 1986 at the NGO meeting on "The United Nations and Human Rights", Geneva.

31/ See, for example, A/44/668, para. 117.

32/ A/44/98, para. 96.

33/ For example, the CESCR at its third session, E/CN.4/1989/29, art. 45 (a).

34/ Rule 69 of the rules of procedure, E/1989/22, annex IV.

35/ Rule 62 of the rules of procedure, A/43/46, annex III.

36/ HRI/MC/1992/2, paragraph 27.

37/ CAT/SR.2, SR.5 and SR.6.

38/ On this point, see, for example, A/44/668, paragraph 121.

39/ Manual on Human Rights Reporting, E.91.XIV.1, pp. 123-124.

40/ HRI/MC/1992/2, paragraph 24.

41/ E/CN.4/1990/39.

42/ HRI/MC/1992/2, para. 21.

43/ Para. 23 of the report of this meeting.

44/ See report of the fourth meeting of chairpersons, para. 75.

45/ Para. 71 of the report.

46/ A/37/40, annex X.

47/ For a more detailed analysis of the effectiveness of these procedures, see, for example, the periodic analyses of Manfred Nowak on the Committee's decisions in the Human Rights Law Journal (Kehl, Germany), and McCarthy, T. and Tardu M., Human Rights: The International Petition System, Volume 2, Oceana, Dobbs Ferry, New York, 1980.

48/ Report on this question by M. Alston to the Committee on Economic, Social and Cultural Rights.

49/ See M. Nowak, HR Law Journal, 7(1986), Parts 2-4.

50/ See, for example the 1989 report of the Committee to the General Assembly, A/44/40, para. 614.

51/ During the first 20 years of its existence, the European Commission had declared inadmissible 5,852 complaints out of a total 5,960 complaints received. (See Council of Europe document DH(73)8, p.55, table DI).

52/ See CCPR/C/L.2/Add.2 and A/32/44, paras. 90-930.

53/ E/CN.4/1992/29.

54/ CCPR/C/29/D/155/1983 and CCPR/C/37/D/241/1987 and 242/1987.

55/ See, for example, rule 3 of the rules of procedure of the Committee against Torture.

56/ See, for example, A/2929, p.86.

57/ A/32/44, paras. 77-80.

58/ A/43/40, para. 656.

59/ A/44/40, para. 621.

60/ A/44/40, para. 620.

61/ E/CN.4/1991/22, para. 86.

62/ See, for example, A/CONF.157/PC/7, para. 65.

63/ See, for example, Cassese, A., "The Admissibility of Communications to the UN on HR Violations", 5 Human Rights Journal, pages 378-81 (1972).

64/ See E/CN.4/Sub.2/1989/47.

65/ See discussion in E/CN.4/Sub.2/1990/14, paras. 15-33.

66/ See for example document A/CONF.157/PC/6/Add.2, proposals by the NGO Consultation in New York, para. 12.

67/ See, inter alia, Economic and Social Council resolution 1985/37 and the reports by the Special Rapporteur to the Sub-Commission (E/CN.4/Sub.2/1987/19/Rev.1 and Add.1 and 1 et seq.).

68/ See, inter alia, the draft principles prepared by a group of experts invited by the Special Rapporteur on 12 to 14 March 1991, in which I took part (E/CN.4/Sub.2/1991/28/Annex I).

69/ See, inter alia, the studies in documents A/7720 and A/8952.

70/ See, inter alia, General Assembly resolution 2675 (XXV) and 2676 (XXV). The question of the relations between international human rights law, humanitarian law and refugee law has been the subject of remarkable new essays in the Bulletin of Human Rights No. 92/1, United Nations, New York, 1992.

71/ A/38/40, B.264.

72/ A/38/40, P.269.

73/ Nowak, M., 7 Human Rights Law Journal, 1986, parts 2-4.

74/ See, for instance, A/CONF.157/PC/6/Add.2.

75/ A/CONF.157/PC/6/Add.3.

76/ Droits de l'Homme et Communauté Européenne: Vers 1992 et au-delà, Proceedings of the Conference, Strasbourg, 20-21 November 1989.

77/ See in this connection A/CONF.157/PC/6 (Holy See).

78/ See, for example, A/CONF.157/PC/6/Add.2 (Amnesty International).

79/ S/24111, paras. 38-39.

80/ Paras. 40-43 of the report of 19 October 1992.

81/ See, for example, General Assembly resolution 43/128 and Commission on Human Rights resolutions 1986/54, 1987/39, 1988/74 and 1989/53.

82/ For further details, see E/CN.4/1991/22 and A/CONF.157/PC/17.

83/ E/CN.4/1991/22, paras. 89-90.

84/ E/CN.4/1991/22, para. 89.

85/ Op. cit.

86/ ABC: Teaching Human Rights, United Nations, New York, 1989.

87/ E/CN.4/1992/49, para. 23.

88/ E/CN.4/1992/49, paras. 168-169.

89/ E/CN.4/1992/49, para. 9.

90/ E/CN.4/1992/49, para. 20.

91/ E/CN.4/1992/49, para. 85.

92/ Op. cit., para. 93.

93/ E/CN.4/1992/49, para. 85.

94/ E/CN.4/1992/49, paras. 21-34.

95/ Human Development Report 1992, UNDP, New York, 1992. The definition of "human development" includes providing wider choices, particularly with regard to "freedom" at the "political" level.